United States Court of Appeals

for the Second Circuit

APPENDIX

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P/S

75-7283

United States Court of Appeals

For the Second Circuit.

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiffs-Appellants,

-against-

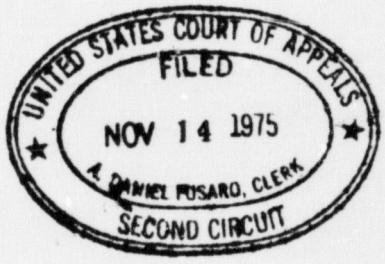
SECURITIES & EXCHANGE COMMISSION, et al.,

Defendants-Appellees.

On Appeal From The United States District Court For The Southern District Of New York

Joint Appendix

SAMUEL SLOAN
For Appellants Pro Se
917 Old Trents Ferry Road
Lynchburg, Virginia 24503
(804) 384-1207



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CIVIL DOCKET

UNITED STATES DISTRICT COURT

A1

JUDGE GRIES.

Jury demand date:

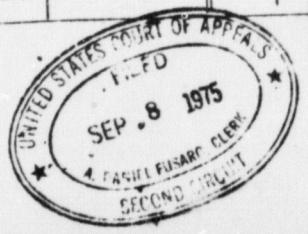
10-22-74 - Pltff

74 CV 2179

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
SAMUEL H. SLOAN SAMUEL H. SLOAN & CO. VS. SECURITIES AND EXCHANGE COMMISSION UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION NATIONAL QUOTATION BUREAU, INC. BUNKER RAMO CORP. NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. DISCLOSURE, INC. NATIONAL CLEARING CORP.	For plaintiff: Samuel H. Sloan, 120 Liberty St., N.Y.C. 10006 ~~635-4527~~ 583-8565 3-28-75 For defendant: S.E.C. 26 Federal Plaza, NYC 10007 Breed Abbott & Morgan 1 Chase Manhattan Plaza, NYC 10005 (DeftBunker Ramo Corp.) & Nat'l Clearin; Nat'l Assoc. of Sec. Dealers, Inc. Wilkie Farr & Gallagher 1 Chase Manhattan Plaza, NYC 10005 248-1000 (Disclosure, Inc.)

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk		6/27/74	S H Sloan	15 —	
			7/1/74	U.S. Treas		15 —
J.S. 6 mailed	Marshal					
Basis of Action: Securities Laws S.E.C. suits, re; declaratory relief.	Docket fee					
	Witness fees					
Action arose at:	Depositions					



74 CIV 2792 SAMUEL H. SLOAN VS. SECURITIES AND EXCHANGE COMMISSION 74 CIV 2792

JUDGE GRIESA

74 CIV 2792

DATE	PROCEEDINGS	Date Order Judgment
Jun 27-74	Filed complaint & issued summons.	
Jul 3-74	Filed summons & return - served SEC by Certified Mail- Atty. General & SEC 6-28-74	
Aug.26-74	Filed ANSWER of deft SEC to complt.	USA
Aug.29-74	Filed affdvt of service by Lynda L. Cole of mailing of answer to pltff.	
Sep.19-74	Filed Memorandum & Order that pltff is to file & serve an amended complt on or before 10-2-74, otherwise action will be dismissed. GRIESA,J. m/n	
SEPT 27-74	PRE-TRIAL CONFERENCE HELD BY Griesa J	
Oct.11-74	Filed affdvt & notice of motion by pltff for an order granting leave to file an amended complt. Ret. 10-21-74.	
Oct.24-74	Filed Memo-End. on motion of 10-11-74. There being no opposition the motion is granted.....So Ordered, GRIESA,J. m/n	
Oct.22-74	Filed pltffs amended complt with request for jury trial. Summons issued.	
Nov 21-74	Filed Stip & Order that the time for said deft's Nat'l Clearing Corp, Bunker Ramo Corp, to appear, answer or otherwise move in the above captioned proceeding shall be extended until 12-10-74 - So Ordered - GRIESA,J.	
Nov.19-74	Filed amended summons & Marshal's return. Seeved: U.S.A. U.S. Att'y By: H. Wong 11-8-74 Att'y Gen. Dep't of Justice Cert. Mail 11-8-74	
Nov.22-74	Filed amended summons & Marshal's returns. Served: Nat'l Quotation Bur. By: J.B. Long 11-20-74 Bunker Ramo Corp. Mr. Anthony 11-1-74 Nat'l Assoc. of Sec. Dealers R.H. Lynch 10-31-74 Disclosure, Inc. B. Feiner 10-29-74 Nat'l Clearance Corp. R. Waldow 10-30-74	
Nov 27-74	Filed Stip. & Order that the time of deft. Disclosure to answer the amended complt. is extended to 12-10-74..Griesa, J.	
Dec.5-74	Filed Stip & Order adj. to 12-20-74 time for deft Nat'l Quotation Bureau to answer or move re amended complt.....GRIESA,J.	
Dec.10-74	Filed ANSWER of deft S.E.C.	SEC
Dec.13-74	Filed ANSWER of Bunker Ramo Cor.	BA&M
Dec.13-74	Filed ANSWER of Nat'l Clearing Corp.	BA&M
Dec.13-74	Filed ANSWER of deft Nat'l Assoc. of Sec. Dealers, Inc.	BA&M
Dec.13-74	Filed ANSWER of deft Disclosure Inc.	WF&G
Dec.17-74	Filed certificate of service by SEC of answer to pltff.	
Dec.23-74	Filed deft (Nat'l Quotation) ANSWER to the amended complt.(averments)	
Jan2-75	Filed Order to Show Cause for Prel. Inj....ret. ret. 1-31-75 at 4:30PM in 129....Griesa, J.	
Jan.31-75	Filed defts (Nat'l Assoc. of Sec. Dealers, Nat'l Clearing Corp. & Bunker Ramo Corp.) notice of motion to dismiss & motion for judgment on the pleadings.	
Jan.31-75	Filed defts memo in support of motion for dismissal & judgment on the pleadings.	
Jan.31-75	Filed affdvt in support of defts motion (Gordon S. Macklin.)	
Jan.31-75	Filed affdvt of (John H. Hodges) in support of defts motion.	
Jan.31-75	Filed affdvt of Robert J. Woldow.	
Jan.31-75	Filed deft S.E.C. motion to dismiss or for summary judgment.	
Jan.31-75	Filed deft S.E.C. notice of motion to dismiss. Ret. 2-14-75	
Jan.31-75	Filed deft S.E.C. memo of law in support of motion to dismiss.	
Jan.31-75	Filed deft S.E.C. affdvt of service.	

iv 2792 SAMUEL H. SLOAN -v- S.E.C.,,et al 74 Civ 2792

CIVIL DOCKET

 GRIESA,J.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED EMOLUMENT RETURNED
Feb.3-75	Filed def't (Nat'l Quotation Bureau) affdvt & notice of motion for judgment on the pleadings. Ret. 2-14-75			
Feb.3-75	Filed def't (NQB) memo in support of motion for judgment on the pleadings.			
Feb.3-75	Filed def't (NQB) affdvt in opposition to pltffs motion for a preliminary injunction.			
Feb.3-75	Filed def't (NQB) memo in opposition to pltffs motion for a preliminary injunction.			
Feb.5-75	Filed pltffs affdvt & notice of cross-motion for a preliminary & permanent injunction to enjoin S.E.C. Ret. 2-14-75.			
Feb.11-75	Filed defts (S.E.C.) response to pltffs motions for prelim. inj. & perm. summary judgment, & the conveneing of a three-judge court.			
Feb.13-75	Filed pltffs affdvt & notice of cross-motion to disqualify Thomas L. Taylor III as counsel for S.E.C. Ret. 2-14-75			
Feb.13-75	Filed pltffs affdvt in opposition to deft (Nat'l Quotation) & reply affdvt in support of motion for a prelim. inj.			
Feb.13-75	Filed pltffs affdvt in opposition to motion of defts (NASD, NCC & Bunker).			
Feb.13-75	Filed pltffs supplemental affdvt.			
Feb.24-75	Filed pltffs notice of motion for reargument, Ret, 3-7-75			
Feb.24-75	Filed pltffs memo of law in support of motion to reargue.			
Feb.24-75	Filed Memo-End. on copy of TRO of 1-10-75. Motion denied. See minutes of 2-14-75. So Ordered, GRIESA,J. m/n			
Feb.24-75	Filed Memo-End. on motion of 1-31-75. Motion to dismiss complt granted as to all defts, without leave to replead. See minutes of 2-14-75. So Ordered, GRIESA,J m/n			
Feb.24-75	Filed Memo-End. on deft Nat'l Assoc. of Sec. Dealers of 1-31-75. Motion to dismiss complt granted. See minutes of 2-14-75.... So Ordered, GRIESA,J m/n			
Feb.24-75	Filed Memo-End. on motion of 2-3-75. Motion to dismiss complt granted. See minutes of 2-14-75. So Ordered, GRIESA,J m/n			
Feb.24-75	Filed Memo-End. on cross-motion of 2-5-75. Motion denied. See minutes of 2-14-75. So Ordered, GRIESA,J. m/n			
Feb.24-75	Filed Memo-End. on cross-motion of 2-7-75. Motion denied. See minutes of 2-14-75. So Ordered, GRIESA,J. m/n			
Feb.24-75	Filed Memo-End. on motion of 2-13-75. Motion denied. See minutes of 2-14-75. So Ordered, GRIESA,J m/n			

//////////// Con't on Page #3

74 Civ 2792 SAMUEL H. SLOAN, et ano -v- S.E.C., et al 74 Civ GRIESA.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
eb.25-75	Filed amended summons & Marshal's return. Served: U.S. Atty, Dept of Justice By: W. Brannon 2-24-75			
eb.27-75	Filed Order & Judgment that defts S.E.C., etal have judgment against Samuel H. Sloan, dismissing the complt without leave to replead. Clerk. (Pursuant to Rule 12 (b)) m/n			
Mar.4-75	Filed deft (Nat'l Assoc. of Sec. Dlrs, Bunker Ramo, & Nat'l Clearing,) memo in opposition to pltffs motion for reargument.			
Mar.5-75	Filed deft (Disclosure) memo in opposition to pltffs motion for re-argument.			
Mar.5-75	Filed deft S.E.C. affdvt & response to pltffs motion for reargument.			
r.28-75	Filed pltffs notice of appeal to U.S. Court of Appeals from decision of 2-14-75 & Order of 2-24-75 denying pltffs motion for prelimiary injunction, convening of a three judge court & other relief were denied & complt dismissed, & from Order dated 2-28-75 denying motion for reargument. Copies mailed to: S.E.C., Thomas L. Taylor, 500 N. Capitol St., Wash. D.C. 20549 - Rogers & Wells, 200 Park Ave., NYC. - Breed, Abbott & Morgan, 1 Chase Manhattan Plaza, NYC - Wilkie Farr & Gallagher, 1 Chase Manhattan Plaza, NYC - Paul J. Curran, U.S. Att'y, U.S. Courthouse, Foley Sq., NYC - Lloyd Derrickson, 1735 K St. N.W., Wash. D.C. 20006.			
Apr 1-75	Filed Memo Endorsed on motion for re-argument dated 2-24-75. Motion denied, So Ordered, Griesa,J.(Dated by Judge 2-28-75)			
Apr 23-75	Filed transcript of record of proceedings dated 2-14-75 4:40 pm			
Apr 24-75	Filed transcript of record of proceedings dated 2-14-75 4:30 pm.			

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By M. Gasik
Deputy Clerk

D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRO SE

SAMUEL H. SLOAN,

Plaintiff,

-against-

SECURITIES AND EXCHANGE COMMISSION,

Defendant.

74 CIV 2792

COMPLAINT

FILED
JUN 11 2 19 PM '74
S.D. OF N.Y.

State of New York)
: ss.:
County of New York)

Samuel H. Sloan, being duly sworn, deposes and says:

1. Plaintiff is the owner of positions in approximately 150 over-the-counter securities. He acquired these positions during the course of a three year period as a result of being a market maker in securities listed in the pink sheets. Presently, his holdings include the following security positions:

400	Old Town Corp
$ 38,000	Sheffield Watch Corp 7 1/4-84
1600	Applied Devices Corp
1150	Sav-On Inc
618	Seaferro Inc
13	Canadian Javelin Ltd
approx. 50000	Stirling Homex Pfd
approx. 5000	Stirling Homex Com

2. All of these securities have, at some time in the past, been the subject of an order of suspension by the Securities & Exchange Commission.

3. As a result of these orders of suspension, Plaintiff has suffered financial loss.

4. In addition, Plaintiff was short 800 shares of Triex International, Inc. in December, 1972 when the Securities & Exchange Commission suspended trading in that security. Plaintiff, to the present, has been unable to cover his short position because Triex International, Inc. cannot be listed in the

pink sheets.

5. On December 13, 1971, Rule 15c2-11 promulgated under the Securities Exchange Act of 1934 became effective. That rule prohibits a broker or dealer from publishing any quotation in a security in any quotation medium unless the broker or dealer has in its files information which establishes that the security in question has met the appropriate registration and financial reporting requirements under the Securities Act of 1933, the Securities Exchange Act of 1934 and the rules promulgated thereunder.

6. Rule 15c2-11 and the other Rules promulgated under the Securities Exchange Act of 1934 are an unconstitutional delegation of authority by the President and the Congress of the United States in that they are prohibited by Article 1, Section 1 of the United States Constitution.

7. Violations of Rule 15c2-11 are within the exclusive jurisdiction of the United States District Courts under Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. 78aa). That Section of the Securities Exchange Act of 1934 is unconstitutional in that it infringes upon the jurisdiction of the state courts.

8. The Securities & Exchange Commission has abused the authority delegated to it by Congress by suspending trading in securities on grounds which are arbitrary and capricious. On a single day, the Securities & Exchange Commission has suspended trading in as many as 48 securities.

9. A suspension of trading prohibits registered broker-dealers from buying and selling securities of those companies which are the subject of an order of suspension. However, members of the general public are permitted to buy and sell suspended securities between each other.

10. Plaintiff is a registered broker-dealer in securities. Therefore, he is unable to liquidate his security holdings in those securities which are suspended. This constitutes an unconstitutional infringement upon his right to engage in free commercial enterprise. In effect, the Securities Exchange

Act of 1934 discriminates against Plaintiff because he is a registered broker-dealer.

11. The purchase and sale of securities does not, per se, constitute interstate commerce within the meaning of Article 1, Section 8, Clause 3 of the United States Constitution. Therefore, Congress has no authority to pass legislation regulating the pruchase and sale of securities.

12. Plaintiff is the owner of 7175 shares of Carousel Fashions, Inc. and 300 shares of Vendotronics Corp. These securities are no longer listed in the pink sheets as a result of the effect of rule 15c2-11. The Securities & Exchange Commission will not permit a broker or a dealer to submit a quotation card containing the nameonly of these securities to the National Quotation Bureau for publication in the pink sheets unless the broker or dealer submits a satisfactory Form 211. There is no standard criteria to determine when a Form 211 is satisfactory. As a result the Commission has acted in a manner which is arbitrary and capricious with regard to the acceptance of Forms 211.

12. Plaintiff submitted quotation cards to the National Quotation Bureau during 1973 for the purpose of causing those securities to be listed by name in the pink sheets. On many occasions these cards were returned to Plaintiff with a rubber stamped statement that a Form 211 would be required before that security could be listed in the pink sheets. Plaintiff did, in fact, submit a Form 211 for the securities of Stirling Homex Corp and was able to obtain a listing in the pink sheets for those securities after several weeks of haggling with the Securities & Exchange Commission.

13. Plaintiff, by this action, seeks the right to buy and sell any security and to list any security in the pink sheets in name only without regard to the requirements established by Rule 15c2-11 and without regard to whether an order of suspension may be in effect with respect to that security. In addition, Plaintiff, by this complaint, seeks to have the Securities Exchange Act of

1934 and the rules promulgated thereunder declared unconstitutional.

WHEREFORE, Plaintiff demands that he be permitted to buy and sell any security and that he be permitted to list any security by name in the pink sheets and that the Securities & Exchange Act of 1934 and the rules promulgated thereunder be declared unconstitutional.

Samuel H. Sloan

SAMUEL H. SLOAN
Plaintiff, pro se
120 Liberty St.
New York, N.Y. 10006
(212) 835-4512

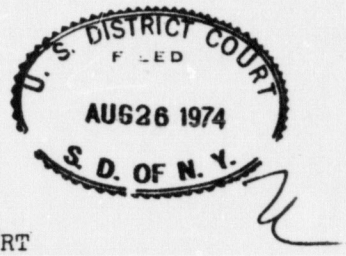
Sworn to before me this
24 day of June, 1974.

William Liebowitz

NOTARY PUBLIC

WILLIAM LIEBOWITZ
Notary Public, State of New York
No. 24-2360301-Qual. in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 19 75

Paul Gonson
Richard E. Nathan
Thomas L. Taylor, III
Lynda L. Cole
Securities and Exchange Commission
500 N. Capitol St., N.W.
Washington, D.C. 20549
Telephone: (202) 755-1563



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN,	:	
Plaintiff	:	
v.	:	74 Civ. 2792 TPG
SECURITIES AND EXCHANGE COMMISSION,	:	ANSWER
Defendant	:	

The defendant Securities and Exchange Commission, by its undersigned attorneys, answers the plaintiff's Complaint as follows:

1. The defendant Commission is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 1 of the Complaint.

2. With respect to the averments of paragraph 2 of the Complaint, the defendant Commission admits that Sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(u) and 78o(5) respectively authorize the Commission to suspend trading in a security on national securities exchanges, and otherwise than on national securities exchanges, and further admits that pursuant to this authority the defendant Commission has on past occasions suspended trading in securities issued by Old Town Corp., Sheffield Watch Corp., Applied Devices Corp., Sav-on Inc., Seaferro Inc., Canadian Javelin Ltd., and Stirling Homex Corp.

3. The defendant Commission is without knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 3 of the Complaint, except that the Commission denies that plaintiff has been injured in any legally cognizable sense as a result of any act or omission by the Commission.

4. The defendant Commission denies each and every allegation contained in paragraph 4 of the Complaint, except that (a) the Commission is without knowledge or information sufficient to form a belief as to the truth of those averments that relate to plaintiff's alleged short position with respect to 800 shares of Triex International Inc., and (b) the Commission admits that on December 15, 1972 it suspended trading in the securities of Triex International, Inc. pursuant to Section 15(c)(5) of the Securities Exchange Act and that the suspension of trading in those securities was continued for consecutive ten-day periods until December 23, 1973.

5. The Commission denies each and every allegation of fact contained in paragraphs 5, 6, 7, 8, 9, 10 and 11 of the Complaint, except to the extent expressly admitted in the following paragraphs.

6. With respect to the averments contained in paragraph 5 of the Complaint, the defendant Commission admits that it promulgated Rule 15c2-11, 17 CFR 240.15c2-11, pursuant to Section 15(c) of the Securities Exchange Act, 15 U.S.C. 78o(c) and that Rule 15c2-11 became effective on December 13, 1971. The Commission avers that in all other respects paragraph 5 sets forth conclusions of law as to which no responsive pleading is required. In the

Commission's view, paragraph 5 sets forth a materially inaccurate and incomplete statement of the provisions of Rule 15c2-11. The Commission respectfully refers the Court to Rule 15c2-11 for the provisions thereof.

7. The defendant Commission avers that paragraph 6 of the Complaint sets forth only conclusions of law as to which no responsive pleading is required. The Commission disagrees with each and every conclusion of law contained in paragraph 6.

8. The defendant Commission avers that paragraph 7 of the Complaint sets forth only conclusions of law as to which no responsive pleading is required. The Commission disagrees with each and every conclusion of law contained in paragraph 7, except that the Commission agrees that purusant to Section 27 of the Securities Exchange Act, 15 U.S.C. 78aa, violations of the Securities Exchange Act and rules and regulations promulgated thereunder, including Rule 15c2-11, are within the exclusive jurisdiction of the district courts of the United States, the district court for the District of Columbia, and the United States' courts of any territory or other place subject to the jurisdiction of the United States. The Commission respectfully refers the Court to Section 27 for the provisions thereof.

9. With respect to the averments contained in paragraph 8 of the Complaint, the Commission admits that pursuant to authority granted by Section 15(c)(5) of the Securities Exchange Act the Commission has suspended trading in as many as 48 securities on a single day.

10. The defendant Commission avers that paragraph 9 of the Complaint sets forth only conclusions

of law to which no responsive pleading is required. Contrary to the conclusion expressed in paragraph 9, the suspension of trading in a security pursuant to Section 15(c)(5) of the Securities Exchange Act applies to all trading in that security other than on a national securities exchange, whether by "members of the general public" or by registered brokers and dealers.

11. With respect to the averments contained in paragraph 10 of the Complaint, the Commission admits that the plaintiff is a broker and dealer in securities, registered as such with the Commission pursuant to Section 15(b) of the Securities Exchange Act, 15 U.S.C. 78o. The Commission avers that in all other respects paragraph 10 sets forth conclusions of law as to which no responsive pleading is required. The Commission disagrees with each and every conclusion of law contained in paragraph 10, except that the Commission agrees that pursuant to Section 15(c)(5) of the Securities Exchange Act, during any period in which trading in a security otherwise than on a national securities exchange has been suspended by the Commission, registered brokers and dealers may not trade in that security otherwise than on a national securities exchange. The defendant Commission respectfully refers the Court to Section 15(c)(5) for the provisions thereof.

12. The defendant Commission avers that paragraph 11 of the Complaint sets forth only conclusions of law as to which no responsive pleading is required. Contrary to the conclusions expressed in paragraph 11, the provisions of the Securities Exchange Act, both generally and as they relate to the facts alleged in the

Complaint, are constitutional and do not purport to affect transactions other than transactions that are within the legislative power granted to Congress pursuant to Article 1, Section 8, Clause 3 of the Constitution relating to interstate commerce.

13. The defendant Commission denies each and every allegation contained in the first paragraph numbered 12 in the plaintiff's Complaint, except that the Commission is without knowledge or information sufficient to form a belief concerning (a) whether plaintiff is the owner of 7,175 shares of Carousel Fashions, Inc. and 800 shares of Vendotronics Corp., or (b) for what reason those securities may no longer be listed in the National Daily Quotation service (the "pink sheets"); the Commission admits that those securities are not currently listed in the pink sheets.

14. Defendant Commission is without knowledge or information sufficient to form a belief as to the truth of the averments contained in the second paragraph numbered 12 in plaintiff's Complaint.

15. The defendant is without knowledge or information sufficient to form a belief as to the truth of such facts as have been alleged in paragraph 13 of the Complaint, and respectfully avers that paragraph 13 otherwise sets forth plaintiff's claim for relief as to which no responsive pleading is required.

FIRST AFFIRMATIVE DEFENSE

16. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

17. The plaintiff does not have standing to raise the issue of the constitutionality of the Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq., and the rules promulgated thereunder, 17 CFR 240.0-1 et seq.

THIRD AFFIRMATIVE DEFENSE

18. This Court does not have jurisdiction of the claim or claims set forth in the Complaint. The Complaint does not contain any statement of the grounds upon which it is asserted that this Court has jurisdiction of the claim or claims set forth in the Complaint.

19. The Complaint purports to state a claim against the Securities and Exchange Commission. Congress has never declared that the Commission can be sued in its own name apart from having its orders reviewed in courts of appeals. Accordingly, this Court does not have jurisdiction of the claims made against the Securities and Exchange Commission, eo nomine.

WHEREFORE, the Securities and Exchange Commission demands judgment dismissing the Complaint of the plaintiff, together with such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

Paul Gonson
Associate General Counsel

A15

Richard E. Nathan
Assistant General Counsel

Thomas L. Taylor, III
Attorney

Lynda L. Cole
Attorney

August 23, 1974

Securities and Exchange Commission
Washington, D.C. 20549
Telephone: (202) 755-1563.

(93)

U.S. DISTRICT COURT
FILED
SEP 19 1974
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

SAMUEL H. SLOAN,

Plaintiff,

v. 74 Civ. 2792

SECURITIES AND EXCHANGE COMMISSION, MEMORANDUM

Defendant.

- -X

MICROFILM
SEP 19 1974

GRIESA, J.

At a pre-trial conference held today, I have determined that the complaint as presently drafted is too vague and lacking in specifics. I have given direction to the pro se plaintiff as to the requirements for an amended complaint.

In accordance with the above, plaintiff is to file and serve an amended complaint on or before October 2, 1974. Otherwise the action will be automatically dismissed.

So ordered.

Dated: September 18, 1974
New York, New York

Thomas P. Griesa

THOMAS P. GRIESA
U.S.D.J.

A17

U.S. DISTRICT COURT FILED OCT 11 1974 S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

SAMUEL H. SLOAN,

Plaintiff,

-against-

SECURITIES & EXCHANGE COMMISSION,

Defendants.
----------X

74 CIVIL 2792
TPG

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affidavit of Samuel H. Sloan sworn to the 10th day of October, 1974 and all the papers and proceedings had herein the undersigned will move this court on October 21st, 1974 at the U. S. Courthouse, New York, N.Y. before the Hon. Thomas P. Griesa for an order granting leave to file an amended complaint and to serve the new party defendants.

Yours, etc.
Samuel H. Sloan
Samuel H. Sloan
120 Liberty Street
New York, New York 10006
(212) 583-6437

To: Securities and Exchange Commission
26 Federal Plaza
New York, N.Y. 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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SAMUEL H. SLOAN,

Plaintiff,

-against-

SECURITIES & EXCHANGE COMMISSION,

Defendants.
----------X

74 CIVIL 2792
TPG

AFFIDAVIT IN SUPPORT OF MOTION

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

Samuel H. Sloan, being duly sworn, deposes and says:

1. I make this affidavit in support of a motion for leave to file an amended complaint.

2. At a conference on September 18, 1974, Judge Griesa told me he would give me two weeks to file an amended complaint. An order of the Court which was entered on the next day gave me until October 2, 1974 to file the amended complaint.

3. I did not file the amended complaint by October 2, 1974.

4. On October 7, 1974 I mailed an amended complaint to the court special delivery and caused a copy thereof to be served by mail on Thomas Taylor, the attorney for the S. E. C.

5. On October 8, 1974 I was advised by the docket clerk that I could not file the amended complaint without an order of the Court extending my time to file.

6. The reason I failed to file the amended complaint on time had to do with problems in obtaining the information necessary to prepare the complaint. It was

my desire to make a complete list of all securities which had been listed in the pink sheets by me and which were subsequently suspended by the S. E. C. There are so many such securities that I could not possibly remember them all. Early this year I visited the Miami branch office of the S. E. C. and I saw a master list of all securities which had ever been suspended by the S. E. C. and the dates on which each suspension had commenced and had terminated. I was told by the S. E. C. investigator who let me see the list that it was not available to the public even though it was merely a tabulation of public information.

7. It was my hope that such a list would be made available to me because it would greatly reduce the amount of research required in preparing the amended complaint. I spoke to both Thomas Taylor and Ira Spindler of the S. E. C. but neither one of them were aware of the existance of such a list. I suppose it is possible that the Miami office made it up themselves. However, Mr. Taylor was very cooperative and he did give me the opportunity to see Ira Spindler's personal file of securities which were suspended during 1973 and 1974. This saved me a considerable amount of time in preparing the complaint.

8. Paragraph 145 of the amended complaint contains a list of 25 securities which were suspended and in which I had previously been listed in the pink sheets. I am sure that there are a number of other securities which are missing from this list but I believe that this list should be fairly complete.

9. Paragraph 23 of the amended complaint states that I have been listed in the pink sheets and the yellow sheets combined in more than 500 separate corporate securities. This should explain the difficulty I have had in assembling a complete list. The S. E. C. has suspended trading in so many securities in which I have made a market that sometimes my competitors have remarked sarcastically that the S. E. C. must go through the pink sheets looking for securities

in which I make a market in order to decide which ones to suspend. Actually, I consider the statement that I have been listed in the sheets in more than 500 securities to be conservative. I would not be surprised if the true number were not closer to 1000.

10. Another reason for the lateness of the amended complaint was the fact that it turned out to be 40 pages long. It would have been considerably longer had I stated every reason given by the S.E.C. for suspending every one of the 25 securities in question. For reasons which should be clear from the complaint, I felt that this would not be necessary or appropriate.

11. One matter of concern to me regarding this motion is the fear that the S.E.C. will oppose this motion with what amounts to a motion to dismiss. The reason this concerns me is the fact that the amended complaint names four new defendants. If the S.E.C., in effect, moves to dismiss, the court may take several months to decide this motion. In the meantime, I would not be able to cause service to be effected on the four new defendants. I cannot properly make such service until the amended complaint is filed with the cashier and docketed with the docket desk. Thus I may have to wait several months before effecting service on the new defendants. I would like to find a way to avoid this. I think it would be beneficial to everybody concerned to have all the parties come into this lawsuit as soon as possible and to have all possible motions decided by the Court at the same time. Thus I ask that this court grant me leave to file the amended complaint with the docket clerk immediately and permit me to take the amended complaint to the marshal's office and have it served on the new defendants. This could be done without prejudice to any motions to dismiss or motions to strike portions of the complaint which might be brought on by the S.E.C.

12. I could take the amended complaint "as is" to the Marshal's office and have it served immediately. However, I suspect that such service might

be defective and might cause serious problems later on. I could also purchase a new civil index number and file the amended complaint as a new complaint under that index number. Again I suspect that this would lead to unnecessary problems. I am forced to admit that I have experience in these matters. I did exactly the same thing in Sloan v. Canadian Javelin Ltd., 73 Civil 3801 and 73 Civil 4403, (CCH Fed Sec Law Reporter #94,579 (1973 transfer binder)). Subsequently, it took a 16 page affidavit for me to explain to the court of appeals what happened after I did these things. That appeal is still pending. In any event, I have no intention of making the same mistakes again unless I have permission from the court to do so.

13. I have discovered that the amended complaint contains at least 15 typographical errors and spelling mistakes. Most of these mistakes are minor and almost unnoticeable (to me anyway, since I am a poor speller). Still, I find them embarassing especially since I am aware of a rule in the F.R. Civ. P. which prohibits erasures. These errors occured due to the shortness of time which was available to type the complaint. In any event, I think it would be best for everybody concerned if I were given the opportunity to have these errors corrected.

14. Attached hereto as exhibit A is a letter which I just received two days ago. This letter is not directly relevant to the motion before this Court but it should enlighten the Court as to the issues involved in this lawsuit. Although the author of this letter does not identify the capacity in which he is writing, I know him to be the person presently in control of Triex. I believe that he is the Chairman of the Board of Triex. Mr. Slatko has had an illustrious career. Formerly he was a member of the bar of the State of New York. A few years ago he moved his law practice to Florida. Shortly thereafter, in early 1973, he served two months in Federal Prison after pleading guilty to failure to file his income tax returns in 1963

and 1964. He is also the subject of an S.E.C. civil injunction (S.E.C v. Century Investment Transfer Co., CCH Fed Sec Law Rep #93232 (1971-2 transfer binder)) S.D.N.Y. Now he says that he may sue me for violations of Rule 10(b)-5 promulgated under the Securities Exchange Act of 1934. I find such a prospect interesting. As far as I know, the stock transfer records which he says are in a shambles are located in his office in Miami. There were personally examined there by me when I went to Miami for three days earlier this year (I believe I was in Miami in late February or early March, 1974.) Later on, his associate, a Mr. Bernstein, the president of Triex, offered to, in effect, sell me control of Triex for $20,000. I understand that control of Triex was given to Slatko for nothing in September 1973 by the former principals of Triex who believed that in so doing they would resolve their own problems with the S.E.C. Apparently, they were not aware of Slatko's background at the time of this gift. Neither was I when I wasted a trip to Florida to see him. I am thinking of writing Slatko back a letter informing him of the existance of this lawsuit and asking him if he wants to try to intervene. In any event, I thought that this Court would find this letter to be enlightening.

WHEREFORE, deponent respectfully prays that this Court grant his motion for leave to file amended complaint and grant him leave to serve the new party defendants forthwith.

Samuel H. Sloan
SAMUEL H. SLOAN

Sworn to before me this 10th
day of October, 1974

Roberta E. Fishbein
ROBERTA E. FISHBEIN
Notary Public, State of New York
Certified New York County
No. 4518842
Commission Expires 3/30/76

A23

SHEROUSE, VIRGIN, WHITTLE & SLATKO
LAWYERS

KENNETH B. SHEROUSE, JR.
HERBERT WHITING VIRGIN, III
CHESTER E. WHITTLE, JR.
ROBERT H. SLATKO
MARC A. KUPERMAN

555 ROBERTS BUILDING
28 WEST FLAGLER STREET
MIAMI, FLORIDA 33130
TELEPHONE (305) 377-8715

ONE HUNDRED BUILDING
100 SOUTHEAST 6TH STREET
FORT LAUDERDALE, FLORIDA 33301
TELEPHONE (305) 527-0134

PLEASE REPLY TO: Miami

October 3, 1974

Samuel Sloan & Company
120 Liberty Street
New York City, N.Y.

Attention: Mr. Sloan

Dear Sir:

We have been advised by the Miami office of the Securities and Exchange Commission that Samuel Sloan & Company is seeking to solicit offers to purchase and offers to sell the common stock of Triex International Corporation, by placing an "offers wanted, bids wanted" quotation in the pink sheets published by the National Quotation Bureau.

While such a quotation may not violate the letter of Rule 15c2-11 ('34 Act), it clearly violates the spirit of that rule. I refer to the fact that you are with knowledge that the financial records of the company and the stock transfer records of the company are in a shambles and that it is manifestly impossible for any seller or purchaser of the stock to make an informed judgment as to such decision.

In view of that state of affairs, (and even if Rule 15c2-11 is inapplicable), an act which could lead to the purchase and sale of the securities could well be interpreted as a violation of Rule 10b-5. I know that you are familiar enough with the broad thrust of Rule 10b-5 to appreciate that caution.

EXHIBIT A

In any event, this letter is to place you on notice that the officers and directors of Triex International Corp. are opposed to any form of quotation (even one that provides only for solicitations of bids or offers), and would feel compelled to take legal action to preclude any such quotation if you should persist in that effort.

Very truly yours,

SHEROUSE, VIRGIN, WHITTLE & SLATKO

Robert H. Slatko

RHS/tlk

ENDORSED MEMO ON MOTION GRANTING LEAVE TO FILE AMENDED COMPLAINT

There being no opposition the motion is granted. So ordered.

10/21/74

s/ Thomas P. Griesa
USDJ

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

SAMUEL H. SLOAN
SAMUEL H. SLOAN & CO.

Plaintiffs,

-against-

SECURITIES & EXCHANGE COMISSION,
UNITED STATES OF AMERICA as the
SECURITIES & EXCHANGE COMISSION
NATIONAL QUOTATION BUREAU, INC.
BUNKER RAMO CORP.
NATIONAL ASSOCIATION OF SECURITIES
DEALERS, INC.
DISCLOSURE, INC.
NATIONAL CLEARING CORP.

Defendants.

----------X

U.S. DISTRICT COURT
FILED
OCT 22 1974
S. D. OF N. Y.

Summons Issued

AMENDED COMPLAINT

74 civil 2792
(TPG)

State of New York :
: ss.:
County of New York :

Samuel H. Sloan, being duly sworn, deposes and says:

1. This action is brought under the Securities Exchange Act of 1934 ("Exchange Act"), Sections 1 and 2 of the Sherman Act (15 U.S.C. 1&2), Section 3 of the Clayton Act (15 U.S.C. 14), and the Law of the State of New York and Common Law.

2. This court has jurisdiction under Section 27 of the Securities Exchange Act of 1934 (U.S.C. 78aa), Section 4 of the Sherman Act (15 U.S.C. 4), Section 4 of the Clayton Act (15 U.S.C. 15) and under the doctrine of ancillary jurisdiction.

THE PARTIES

3. Samuel H. Sloan & Co.("Sloan & Co.") is a broker-dealer registered with the Securities & Exchange Commission.

4. Sloan & Co. originally was a partnership formed pursuant to an oral partnership agreement between Samuel H. Sloan ("Sloan") and Harry G. Theodos ("Theodos"). Sloan & Co. became a registered broker dealer on May 10, 1970. On January 11, 1971, Sloan and Theodos terminated their partnership agreement by a written agreement dated January 11, 1971. Subsequently thereto, Sloan attempted

to file various broker dealer amendments and applications with the Securities & Exchange Commission for the purpose of reflecting the fact that Theodos was no longer a partner in Sloan & Co. All of these amendments and applications were rejected by the Securities & Exchange Commission for various reasons. Sloan also attempted to file a name change from Samuel H. Sloan & Co., to Sloan at various times. These filings were also rejected by the Securities & Exchange Commission.

5. According to various court filings by the Securities & Exchange Commission in an action entitled S.E.C. V. Samuel H. Sloan & Co. (369 F. Supp. 996 (1974)), Sloan is the sole proprietor of Sloan & Co.
6. Samuel H. Sloan takes the position that the refusal of the Securities & Exchange Commission to accept filings changing the name of the registered broker-dealer from Sloan & Co. to Sloan was and is arbitrary, capricious, an abuse of delegated authority, and unconstitional. In addition, the existance of this dispute has injured the business of plaintiff and has created unnecessary confusion.
7. Based on the reasoning above, Samuel H. Sloan is a broker-dealer registered with the Securities & Exchange Commission and has been so registered with the Securities & Exchange Commission from January 11, 1971 to the present.
8. The Securities & Exchange Commission ("S.E.C.") is an agency of the United States of America. The S.E.C. consists of 5 individual commissioners who are being sued herein individually and in their official capacity. These five commissioners are appointed by the President with the approval of Congress. The United States of America is a soverignty.
9. Defendant National Quotation Bureau, Inc. is the publisher of the "pink sheets", the "yellow sheets", the National Stock Summary, the Monthly Stock Summary, the National Bond Summary, and other publications.

10. Defendant Bunker Ramo Corp. is the owner and operator of NASDAQ, which is an electronic quotations system. Defendant National Association of Securities Dealers, Inc. is an association of brokers and dealers which ownes defendant NATIONAL CLEARING CORP.
11. Defendant Disclosure, Inc., a wholly owned subsidiary of Reliance Group, Inc., microfilms and reproduces documents on file in the public reference department of the S.E.C. for sale to the public.

STATEMENT OF FACTS

12. Neither Sloan & Co. nor Sloan are now or ever were a member of the National Association of Securities Dealers, Inc.
13. From June 26, 1970 to August 16, 1973 with the exception of an interval during the last half of 1971, Sloan & Co. was a subscriber to the "pink sheets" and the "yellow sheets".
14. From June 26, 1970 to August 16, 1973, Sloan and Sloan & Co. derived their income from acting as a market maker in over-the-counter securities listed in the pink sheets and the yellow sheets.
15. The "pink sheets" are a daily listing published by the National Quotation Bureau Inc. which lists the name and telephone number of all broker-dealers who are subscribing to the pink sheets and who submit quotation cards indicating an interest in trading in a specific over-the-counter security. The broker-dealers who submit cards are given the option of listing by security bid and/or asked quotations or of submitting BW("Bid Wanted") or OW ("offerings wanted") indications or of "going in blank" meaning "in name only" or without a bid or an asked quotation.
16. The "yellow sheets" are the same as the "pink sheets" except that they contain listings of corporate bonds. A subscription to the pink sheets includes with it a subscription to the yellow sheets. The National Stock

Summary is a book published on a semi-annual basis by the National Quotation Bureau, Inc. which lists bid and asked quotations which have appeared in the pink sheets during the previous six month period. The Monthly Stock Summary is a monthly supplement to the National Stock Summary. The National Bond Summary is the same as the National Stock Summary except that it lists quotations which have appeared in the "yellow sheets" during the previous six month period. The Monthly Bond Summary is a monthly supplement to the National Bond Summary.

17. The National Quotation Bureau, Inc. publishes a number of other services which provide quotations information.
18. The publications of the National Quotation Bureau, Inc. are generally regarded as the authoratative source for all quotations information concerning securities traded over-the-counter.
19. There is no other service or organization in competition with the National Quotation Bureau, Inc.
20. The National Quotations Bureau Inc. operates a monopoly.
21. Broker-dealers who list their names in the pink sheets or the yellow sheets are usually over-the-counter market makers. However, broker-dealers who are listed in the pink sheets may be interested in purchasing and/or selling the securities in question for the account of a customer. They may also be interested in purchasing and/or selling "away from the market" meaning that they are looking for bargains or that they will buy only if the market falls or they will sell only if the market rises.
22. Sometimes broker-dealers list in the pink sheets even if they do not want to buy or sell. However, this practice is discouraged by the National Quotations Bureau, Inc.
23. At one time or another Sloan has made a market and has caused the name of Samuel H. Sloan & Co. to be listed in the pink sheets and the yellow sheets combined in more than 500 seperate corporate securities.

24. In 1971, defendant Bunker Ramo Corp., in conjunction with defendant National Association of Securities Dealers, Inc., completed the development of NASDAQ.

25. NASDAQ stands for National Association of Securities Dealers Automated Quotations.

26. NASDAQ is a nationwide electronics quotations system which links market makers with each other and with "retail houses" which do business with public customers.

27. Sloan does no business with public customers.

28. Market makers who are authorized by the National Association of Securities Dealers Inc. to make markets are required to quote firm markets "on the machine" on a continous basis and to list both bid and asked prices. Only "registered" market makers can go on the machine. Usually, a broker-dealer who is a registered NASDAQ market maker must notify the National Association of Securities Dealers Inc. 48 hours in advance before going on the machine. If it wants to go off the machine, the market maker must obtain an "excused withdrawal" or else face such penalities as may be imposed by the National Association of Securities Dealers Inc.

29. There is no business or service in competition with NASDAQ.

30. NASDAQ is a monopoly.

31. Defendant National Association of Securities Dealers Inc., has contracted with defendant Bunker Ramo Corp. to, in effect, guarantee the receipts from NASDAQ.

32. The National Association of Securities Dealers, Inc. regulates the making of markets on NASDAQ by deciding who may make markets and which securities of which corperations will be quoted on NASDAQ. This is done by the NASDAQ operations department of the National Association of Securities Dealers, Inc. at 77 Water Street, New York, N.Y. which has a master computer terminal which physically controls and regulates all input into NASDAQ.

33. Subscribers to NASDAQ must subscribe to either level one

level two or level three of NASDAQ. Subscribers to level one of NASDAQ are permitted to receive on standard quotation machines, current representative bid and asked quotations for each security listed on NASDAQ. Subscribers to level two of NASDAQ have a machine installed in their offices which is actually a computer terminal that provides the identity of all market makers in each security on NASDAQ and provides the bid and asked quotation of each market maker. Subscribers to level three of NASDAQ are permitted to become market makers and to enter their own bid and asked quotations on NASDAQ by pushing buttons on the same computer terminal that is used by subscribers to level two of NASDAQ.

34. The National Association of Securities Dealers Inc. will not permit non-members of the National Association of Securities Dealers Inc. to become subscribers to level three of NASDAQ.

35. The National Association of Securities Dealers, Inc. has promulgated Article III Section 25 of the Rules of Fair Practice which provides that no member shall deal with any non-member broker or dealer except at the same prices, for the same commissions or fees, and on the same terms and conditions as are by such member accorded to the general public.

36. According to the interpretation of the National Association of Securities Dealers, Inc., Article III Section 25 of the Rules of Fair Practice acts in such a way as to prohibit a non-member of the National Association of Securities Dealers, Inc. from making markets on NASDAQ.

37. On a number of occasions from 1971 to the present, Sloan has inquired about the possibility of becoming a subscriber to level three of NASDAQ.

38. The most recent such inquiry took place on October 4, 1974.

39. On each and every such occasion, Sloan has been told that he would be premitted to make markets on NASDAQ if and only if he were to become a member of the National Association

of Securities Dealers Inc.

40. Sloan has no intention of joining the National Association of Securities Dealers, Inc. One reason for this relates to Section 2 of the Code of Arbitration Proceedure of the National Association of Securities Dealers, Inc. This section is known as the compulsary arbitration rule. Sloan considers this rule to be unconstitional.

41. Section 1 of the Code of Arbitration Proceedure of the National Association of Securities Dealers Inc. provides for arbitration of all disputes between members and between members and their customers arising out of the securities business of any members.

42. Section 2 of the code of Arbitration Proceedure of the National Association of Securities Dealers, Inc. provides that any dispute, claim or controversy subject to arbitration under the Code shall be submitted to arbitration at the insistance of a member against another member or at the insistance of a public customer against a member.

43. Defendant National Association of Securities Dealers, Inc. has promulgated Article 6 Section 6.01 of the By-Laws of the National Clearing Corp. This Section, in effect, prohibits non-members of the National Association of Securities Dealers, Inc. from joining the National Clearing Corp.

44. At various times during 1972 and 1973 Sloan attempted to join the National Clearing Corp. The National Clearing Corp. never took any action with respect to his attempts to become a member.

45. Many broker-dealers have refused to enter into securities transactions with Sloan on the grounds that Sloan is not a member of the National Clearing Corp.

46. There is no other service or organization in competition with the National Clearing Corp.

47. The National Clearing Corp. is owned and operated by defendant National Association of Securities Dealers, Inc.

48. The National Clearing Corp. provides a clearing function for member banks and brokers on a continuous net settlement basis.

49. The National Clearing Corp. is a monopoly.

50. The S.E.C. has promulgated proposed rule 15c2-10 which would regulate Automated Quotations Systems. NASDAQ is the only automated quotations system in existance which quotes markets in over-the-counter securities.

51. The S.E.C. has promulgated Rule 15c2-11 under Section 15 (c) (2) of the Securities Exchange Act of 1934. This rule became effective on December 13, 1971.

52. After Rule 15c2-11 became effective, defendant National Quotation Bureau, Inc. developed a form known as Form 211.

53. Form 211 was developed in an effort to cooperate with the S.E.C. in enforcing Rule 15c2-11.

54. The proceedure adopted by the National Quotation Bureau, Inc. is that when a broker-dealer subscribing to the pink sheets submits a quotation card containing the name of a security which has not been listed in the pink sheets for more than three days, the National Quotation Bureau, Inc. will stamp the quotation card in large black letters "FORM 211" and return the card to the subscribing broker-dealer. Defendant National Quotation Bureau, Inc. will then refuse to list the security in question in the pink sheets until the completed Form 211 has been submitted.

55. Form 211 requires that the submitting broker-dealer provide information concerning the security under which the broker-dealer wishes to be listed, to state which, if any, exemption from Rule 15c2-11 is being relied upon in submitting a quotation and to sign a statement which says that:

"I certify that I have examined this form and, to the best of my knowledge and belief, it is true, correct and complete. I authorize the National Quotation Bureau, Inc. to furnish a copy of this questionnaire and any or all of the information contained in this form to the Securities and Exchange Commission or any other regulatory agency.

56. Upon receipt of an acceptable Form 211, the National Quotation Bureau, Inc. forwards it to the S.E.C.

57. The name of the person who handles the processing of Form 211 at the New York Regional Office of the S.E.C. is Ira Spindler.

58. If the S.E.C. does not want to have bid or asked quotations in the security in question to be listed in the pink sheets, Ira Spindler calls the subscribing broker-dealer by telephone and informs him that the broker-dealer faces possible enforcement proceedings by the S.E.C. if he lists the securities in que' ion in the pink sheets.

59. In most cases, the subscribing broker-dealer withdraws his Form 211 rather than face enforcement proceedings brought by the S.E.C.

60. The S.E.C. has the authority under Sections 15(c)(5) and Section 19(a)(4) of the Exchange Act to summarily suspend trading in any security.

61. A suspension of trading prohibits any person within the jurisdiction of the United States Courts from buying or selling the suspended security.

62. It is the policy of the S.E.C. to suspend trading in a security for a period of ten days. If the S.E.C. wishes to continue the suspension of trading for a longer period of time it will issue orders of suspension for suceeding ten day periods.

63. The S.E.C. has suspended trading in securities of Continental Vending Machine Corp. for successive ten day periods from March 8, 1963 to the present.

64. The S.E.C. has never made public the reason for which it continues to suspend trading in securities of Continental Vending Machine Corp.

65. It is the present practice of the S.E.C. that whenever the S.E.C. issues a release announcing the suspension of trading, that release contains a statement (usually brief) giving reasons for the suspension. This statement is followed by these words:

"The Commission cautions broker-dealers, shareholders and prospective purchasers that they should consider carefully the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that pursuant to Rule 15c2-11 under the Exchange Act, no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Securities and Exchange Commission, Division of Enforcement in Washington,D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action."

66. When the S.E.C. decides to suspend trading in a particular security, it usually does so either when the market opens at 10:00 a.m. Eastern Standard Time or at some later time while the market is open.

67. The proceedure followed by the S.E.C. is that when the S.E.C. suspends trading in a security, an employee of the S.E.C. calls all the market makers listed in the pink sheets in that security and informs each market maker that the S.E.C. has suspended trading in that security. These calls usually take place within one or two minutes of the time the suspension of trading takes effect.

68. Since the S.E.C. is never able to call simultaneously all the brokers listed in the pink sheets, it sometimes happens that the broker-dealer who receives the first call from the S.E.C. is at a competitive advantage.

69. Within five or ten minutes after the S.E.C. has suspended trading in a security, the public is informed of this fact by an announcement on the Dow Jones News Service. This announcment is repeated the next day in the Wall Street Journal.

70. In principle, there is no way for any person not employed by the S.E.C. to learn in advance whether the S.E.C. intends to suspend trading in a security.

71. When the S.E.C. suspends trading in a security quoted on NASDAQ, the S.E.C. informs the Department of the National Association of Securities Dealers, Inc. which controls the operations of NASDAQ.

72. At the moment that trading suspension takes effect, the National Association of Securities Dealers, Inc. causes the machine to go blank so that no quoted markets appear on NASDAQ with respect to the suspended security.

73. On some occasions,by accident or otherwise, the S.E.C. has informed a market maker that trading will be suspended in a security and has provided this information a few minutes before the suspension of trading takes effect.

74. A likely result of this occurance is that the market in that security drops rapidly during the minutes or seconds remaining before the suspension of trading takes effect.

75. When a security has been suspended from trading, it usually either never opens again or it opens at substaintially lower price than it traded prior to the suspension.

76. On a number of ocasions Sloan has been a market maker in a security at the time when the security has been suspended from trading by the S.E.C.

77. In all cases where Sloan had a long position in a security at the time when the suspension of trading took place, Sloan suffered financial loss as a result of the suspension of trading.

78. In at least three cases in which Sloan was short a security in which the S.E.C. suspended trading, Sloan ultimately realized a profit from his short position.

79. It has become the practice of many broker-dealers not to accept delivery in a security while it continues to be the subject of an order of suspension by the S.E.C.

80. On April 13, 1973, the S.E.C. ordered the suspension of trading in Albro Industries, Inc.

82. On April 13, 1973,Sloan was long 2510 Albro Industries, Inc. at an average cost of a little less than $1 per share.

83. About a week before the suspension of trading in Albro Industries, Inc., Sloan received an envelope with no return address which contained photo-copies of newspaper clippings which made it appear that Albro Industries, Inc. was about to go bankrupt. Sloan learned that other market makers in Albro Industries, Inc. had received the same anonymous letter.

84. Shortly thereafter, Sloan received a call from an employee of the S.E.C. office in Washington, D.C. This employee was seeking information about Albro Industries, Inc.

85. Sloan advised the employee of the S.E.C. of the receipt of the letter and, in response to a request, mailed a photo-copy of the letter, to this employee of the S.E.C. the same day.

86. A day or two later, the S.E.C. suspended trading in Albro Industries, Inc.

87. On the evening of the day that trading in Albro Industries Inc. was suspended, Sloan went to a bar in the financial district. Sloan had never been in this bar before. By complete happenstance Sloan was introduced to Jim Yore and Jack Thompson ("Thompson") who were employees of the National Association of Securities Dealers, Inc. and who were involved in the operations of NASDAQ.

88. Although Sloan had never previously met Thompson, it was obvious that Thompson knew Sloan.

89. Thompson appeared to have been drinking heavily prior to Sloan's arrival.

90. On this occasion Thompson made slanderous and defamatory statements concerning Sloan. Thompson accused Sloan of having caused the suspension of trading in Albro Industries, Inc. Thompson said that Sloan had caused a lot of people to lose a lot of money in Albro Industries, Inc., and that one broker was going to be out of business as a result of the suspension of trading of Albro Industries, Inc.

Thompson said that Sloan should not be permitted to be a market maker and that Sloan should not be permitted to operate a brokerage firm.

91. It appeared that Thompson was trying to start a fight with Sloan. However, Jim Yore physically restrained Thompson in order to prevent a fight from taking place. Nevertheless, Thompson continued to behave in a disorderly manner and continued to cause a public commotion.

92. On July 28, 1971, Sloan met with William Nortman, a staff attorney for the S.E.C. in Nortman's office in 26 Federal Plaza, New York, N.Y.

93. At this meeting an agreement was entered into between Sloan and Nortman. The agreement was that Sloan would be permitted to continue to operate his securities business provided that Sloan adhered to certain terms and conditions.

94. After this meeting with Mr. Nortman, Sloan dropped out of the pink sheets.

95. In December, 1971, Sloan applied for readmission to the pink sheets.

96. At this time, Sloan requested that he be listed under the name of Samuel H. Sloan rather than the name of Samuel H. Sloan & Co.

97. Sloan did this because he considered Samuel H. Sloan & Co. to be a non-existant entity.

98. The National Quotation Bureau, Inc. accepted Sloan's application to become a subscriber to the pink sheets but required that he be listed under the name of Samuel H. Sloan & Co.

99. The reason for this was that the S.E.C. had never accepted the B-D amendment submitted by Sloan which changed the name of the broker-dealer from Samuel H. Sloan & Co. to Samuel H. Sloan.

100. Previously, Sloan did not know that this B-D amendment had never been accepted.

101. In spite of the fact that Sloan considered Sloan & Co. to be a non-existant entity, he had no choice but to list

the name of Sloan & Co. in the pink sheets if he wanted to make a market in over-the-counter securities.

102. Sloan proceeded to operate his securities business out of his personal checking account.

103. After Sloan resumed his market making activities, he discovered that it was virtually impossible for him to make a competitive market in the pink sheets in any security listed on NASDAQ on a profitable basis.

104. By this time NASDAQ had become sufficently established so that when a security was quoted on NASDAQ, most NASDAQ subscribers did not even bother to look in the pink sheets.

105. For this reason, Sloan adopted the policy of dealing almost exclusively in securities which were not quoted on NASDAQ.

106. During the year of 1972, Sloan made gross trading profits in excess of $82,000.

107. Sloan experienced those profits at at time when most market makers were losing money.

108. One reason the market makers were losing money was the financial burden which NASDAQ placed upon the market makers.

109. The bulk of the financial burden of NASDAQ is born by the small independant market makers. The large retail firms, most of whom are members of the New York Stock Exchange, bear a relatively small portion of the financial burden.

110. This circumstance may be related to the fact that the board of directors of the National Association of Securities Dealers, Inc. has been composed primarily of officers of members of the New York Stock Exchange whoddo a customer business.

111. The initial rates charged by NASDAQ to it's broker-dealer participants were set by a contract between defendant Bunker Ramo Corp. and defendant National Association of Securities Dealers Inc.

112. Since that time the rate structure has broken down. This is because many broker-dealers who signed contracts with

NASDAQ either refused to pay or threatened not to pay or took measures to get out of their contracts.

113. Greene & Co., a major over-the-counter market making firm, went out of business rather than renew it's contract with NASDAQ.

114. The current practice of defendant Bunker Ramo Corp. is to negotiate each contract seperately depending upon the willingness and the ability of the broker-dealer to pay.

115. Because of the inability of NASDAQ to meet it's anticipated revenues, the National Association of Securities Dealers, Inc. has assessed it's members in order to make up for the deficency.

116. A market maker who puts markets on NASDAQ is required to submit competitive bid and asked quotations on a continuous basis. A market maker or prospective market maker must receive permission from the National Association of Securities Dealers, Inc. to go on and off the machine. NASDAQ market makers are required to keep firm bid and asked prices on the machine and must buy at least 100 shares on the bid or sell at least 100 shares on the asked to any member of the National Association of Securities Dealers, Inc. who calls and wants to enter into such a transaction.

117. For this reason, any time a NASDAQ market maker goes to the bathroom he could suffer a sizable financial loss if the market moves against him and he is thereby forced to trade at an unfavorable price.The policy of the National Association of Securities Dealers, Inc., is that the need to go to the bathroom is not sufficient grounds for an "excused withdrawal" For this reason, Singer & Mackie, Inc., one of the leading NASDAQ market makers, has installed a system which permits it's traders to trade while they are using the toilet.

118. Sloan can not afford such a system. In addition, Sloan does not consider it wise to have an assistant trader to trade for him.

119. The over-the-counter securities markets have traditionally been negotiated markets.

120. Since the inception of NASDAQ, the traditional negotiated markets have ceased to function because NASDAQ markets are firm and there is little opportunity to negotiate.

121. The failure of the negotiated market system to function properly has reduced investor liquidity and has caused the public to suffer financial loss.

122. Since the inception of NASDAQ, many broker-dealers who previously derived substaintial income from making markets in over-the-counter securities have found it no longer profitable to engage in market making activities.

123. This loss of income has caused a number of broker-dealers to go out of business or to fail.

124. The policy of the National Quotation Bureau, Inc. is to require that subscribers to the pink sheets pay their bills six months in advance.

125. In June and July, 1973, Sloan received calls from Bill Bradford of the National Quotation Bureau, Inc. advising Sloan that he was in arrears in paying his bills.

126. Bradford told Sloan that his entire bill came to approximately $3000.

127. Sloan paid $3000 to the National Quotation Bureau, Inc. in the belief that he was paying six months in advance.

128. After the $3000 was paid, Bradford told Sloan that he owed an additional $1500.

129. Sloan did not pay because he did not believe that he owed an additional $1500.

130. On August 16, 1973, Sloan was out of his office during most of the day. When he returned he received a message that Bill Bradford had called. Sloan did not return the call that day.

131. On August 17, 1973, the National Quotation Bureau, Inc. left Sloan out of the pink sheets.

132. Since that time, the National Quotation Bureau, Inc. has advised Sloan that he will not be permitted to go back

into the pink sheets until he pays a bill which he now understands to be $1755.87.

133. Sloan does not believe that he owed the National Quotation Bureau, Inc. $1755.87. However, he is faced with the fact that the National Quotations Bureau, Inc. operates a monopoly.

134. The National Quotation Bureau, Inc. has refused to compromise with Sloan in any way, either by reducing the amount of the claimed indebtedness or by permitting Sloan to make deferred payments.

135. During the period immediately prior to August 16, 1973, Sloan was a subscriber to 100 listings in the pink sheets. Sloan made markets in those securities in which he was listed.

136. On August 16, 1973, Sloan submitted a Form BDW (Broker-Dealer Withdrawal) to the S.E.C.

137. This Form BDW was rejected for technical reasons. Subsequently, Sloan submitted a second Form BDW to the S.E.C.

138. The S.E.C. never responded in writing to the submisssion of this second For BDW. However, staff attorneys for the S.E.C. have told Sloan that the S.E.C. will not permit Sloan to withdraw as a broker-dealer until public proceedings against him are terminated.

139. For this reason, Sloan continues to be a broker-dealer in spite of having requested permission to withdraw.

140. On August 16, 1973, two employees of the S.E.C., Jerome Selvers and Sheldon Kanoff, unexpectedly entered Sloan's office when Sloan was not present and accosted his secretary, Helga Thorvardardottir.

141. As a result of this visit, Helga Thorvardardottir stopped working for Sloan.

142. In early Feburary, 1971, Arthur Bruder, a staff investigator for the S.E.C., called Sloan's mother on the telephone at her residence in Lynchburg, Va. and asked her questions concerning Sloan's financial affairs.

143. On June 4, 1973, William Nortman, a staff attorney for the S.F.C., wrote a letter to Hafdis Simonarson, a former employee of Sloan, asking her to come to the offices of

the S.E.C. and provide information about Sloan's activities. Because of this letter, Sloan was threatened by Gerard A. Bannon, Jr., the boyfriend and paramour of Hafdis Simonarson. On April 18, 1974, Hafdis Simonarson and Gerard A. Bannon, Jr., appeared at the office of the S.E.C. at 26 Federal Plaza, New York, NY. On that occasion, Jerome Selvers and Alan M. Rashes, staff attorneys for the S.E.C., induced Hafdis Simonarson to sign an affidavit which accused Sloan of improper and illegal activities. The accusations contained in the affidavit were false and misleading. Hafdis Simonarson was willing to sign a false affidavit because of personal animosity she was feeling towards Sloan. Jerome Selvers and Alan Rashes knew or should have known that statements made in this affidavit were false and misleading. This affidavit was submitted by the S.E.C. to the U.S. District Court in response to a motion brought on by Sloan in that court although the affidavit bore no relation to any motion before that court. The S.E.C. has since refused numerous requests by Sloan to take an oral deposition of Hafdis Simonarson so that Sloan can prove the falsity of her sworn statements. Sloan was injured by this affidavit because of the emotional stress which he has suffered since the time of the receipt of this affidavit. The emotional stress which Sloan has experienced has been accuentuated by the fact that Gerard A. Bannon, Jr. caused himself to be accidently run over and killed by the nose wheel of an Icelandic Airlines DC-8 jet airplane at Kennedy Airport on May 16, 1974. At the time of this fatal accident, Bannon was experiencing emotional stress related to this S.E.C. problem. Because of this situation, Sloan has been threatened on numerous occasions in connection with this entire affair by individuals who know or knew Hafdis Simonarson and Gerard A. Bannon Jr.

144. Since August 16, 1973, Sloan has not been a market maker in over-the-counter securities. During this period, Sloan has been unemployed and his entire income has been

derived from selling securities he was long on Ausust 16, 1973 and buying securities or, in the alternative, being bought-in on securities he was short on August 16, 1973.

145. At one time or another the S.E.C. has suspended trading in all securities of the following corporations: Administrative Systems, Inc., Albro Industries Inc., Apollo Industries, Inc., Applied Devices Corp. Associates International Inc., Canadian Javelin Ltd., Dalto Electronics Corp., Display Sciences Inc., Ecological Science Corp., FAS International Corp., Four Seasons Equity, Inc., Four Seasons Nursing Centers of America, Inc., Hemisphere Hotels Corp., International Hydrolines Corp., Jerome Mackey's Judo, Inc., Logos Development Corp., Long Island Plastics Corp., Multitech Inc., Offshore Sea Development Corp., Old Town Corp., Pelorex Corp., Rolls Royce Ltd., Seaferro, Inc., Sav-On Inc., Sheffield Watch Corp., Stirling Homex Corp., Triex International, Inc., Volume Merchandise Corp.

146. At sometime prior to the suspension of trading, Sloan & Co. had been listed in the pink sheets or the yellow sheets under securities of each of the above named corporations.

147. At the time that trading was suspended, Sloan was a market maker and was listed in the pink sheets in securities of Albro Industries, Inc., Apollo Industries Inc., Applied Devices Corp., Long Island Plastics Corp., Old Town Corp., Rolls Royce Ltd., Seaferro, Inc., Sav-On Inc., Sheffield Watch Corp., Stirling Homex Corp., Triex International Corp.

148. At some time prior to the suspension of trading, Sloan had made markets in the common shares of the corporations listed in paragraph 145 with the following exceptions: Sloan had made markets in the bonds of Administrative Systems, Inc. but not in the common shares. Sloan had purchased 10,000 common shares of Hemisphere Hotels Corp. but had never made a market in these shares. Sloan had listed in the pink sheets an offering of Logos Development

Corp. at 22 5/8 because Sloan wanted to sell short Logos Development Corp. but Sloan had never traded in Logos Development Corp. Sloan had sold short 500 Pelorex Corp. but had never made a market. Sloan had made a market in the bonds but not in the common shares of Volume Merchandise Corp.

149. Sloan had made a market in the bonds of Sheffield Watch Corp. and the preferred shares of Stirling Homex Corp. in addition to making a market in the common shares of those corperations.

150. At the time of the respective suspensions of trading, Sloan owned the following securities;
2510 Albro Industries, Inc. Com; 100 Apollo Industries, Inc. Com; 1600 Applied Devices Corp. com; 13 Canadian Javelin Ltd. com; 500 FAS International Corp.,com; 10,000 Hemisphere Hotels Corp. com; 200 Multitech, Inc; 400 Old Town Corp. com; 918 Seaferro Inc. com.; 1150 Sav-on Inc. com; and 1600 Stirling Homex Corp. com and 4400 Stirling Homex Corp. Pfd.

151. Sloan still owns all of these securities with the exception of 500 Albro Industries, Inc. com. which he sold at 1/4 per share and 300 Albro Industries, Inc. which he sold at 3/8 per share.

152. Sloan also owned $38,000 Sheffield Watch Bonds which he still owns. Since the suspension of trading was lifted, Sloan has purchased an additional 45,000 Stirling Homex Pfd. Sloan is now the largest single holder of Stirling Homex Pfd. Shares.

153. Most of the securities listed in paragraph 145 never reappeared in the pink sheets after the suspension of trading was lifted.

154. In December, 1972, Sloan & Co. was listed in the pink sheets under Pelcrex Corp.

155. This listing occured as a result of a mistake by the National Quotation Bureau, Inc. Apparently, Sloan had

submitted a pre-titled card for another security and his name had appeared in the pink sheets under Pelorex Corp. as the result of a computer or a key-punch error.

156. At a time when Sloan & Co. was in the pink sheets under Pelorex Corp. by mistake,a staff investigator of the S.E.C. entered Sloan's office and asked to see all his trades in Pelorex Corp. Sloan explained to the S.E.C. staff investigator that he did not make a market in Pelorex Corp., and that he had never heard of Pelorex Corp. prior to the error by the National Quotation Bureau, Inc.

157. As a result of this visit, Sloan decided to sell short 500 Pelorex Corp. He made this short sale because it appeared to him that Pelorex Corp. was being investigated by the S.E.C. because this was the only time the S.E.C. ever came to Sloan's office regarding his trading of a particular security.

158. Sloan sold short 500 shares of Pelorex Corp. at 75 1/2

159. After this short sale was effected, the market in Pelorex Corp. rose to 105 bid-111 asked.

160. At this point, Sloan had a paper loss of $17,750.00 plus commissions.

161. On January 16, 1973, the S.E.C. suspended trading in Pelorex Corp. That suspension of trading was continued for successive ten day periods until September 2, 1973.

162. On August 27, 1973, the S.E.C. issued a release which stated the following:

> The Securities and Exchange Commission announced the termination of the suspension of trading in the securities of Pelorex Corporation ("Pelorex") effective at 12:00 midnight (EDT) on September 2, 1973. The Commission first initiated the suspension of trading on January 16, 1973, primarily because of questions raised concerning the unusual market activity in the common stock of Pelorex. With regard to the unusual market activity it should be noted that in November, 1972, the bid for Pelorex was $65 and thereafter increased to $100 by January, 1973. During this period, there was a lack of adequate and accurate current information concerning the business operations and financial condition of Pelorex.

163. After the suspension of trading was lifted, Sloan was bought in on his 500 shares short position of Pelorex Corp. at a price of 22.

164. On March 10, 1971, at 4:30 p.m., the S.E.C. suspended exchange and over-the-counter trading in all securities of Rolls Royce Ltd.

165. At the time of this suspension of trading, Sloan was a market maker in Rolls Royce Ltd. ADR's (American Depository Receipts). Sloan was listing bid and asked prices in the ADR's in the pink sheets. Sloan had a short position in excess of 30,000 ADR's.

166. In connection with this suspension of trading, the S.E.C. issued Exchange Act Release No. 9104. That release stated the following:

> "Since the announcment of the Rolls-Royce receivership, an active over-the-counter market has developed in Rolls-Royce ADR's. Upon the closing of the aforementioned transfer books American Citizens will be unable to effect the transfer of Rolls-Royce ADR certificates, the conversion of Rolls-Royce common stock, the conversion of common stock into Rolls-Royce ADR's. In view of the above the Commisssion has ordered a suspension of trading in the securities of Rolls-Royce for a period of ten calendar days.

167. While the suspension of trading was in effect, Sloan was injured by virtue of the fact that he was prohibited from making a market in Rolls-Royce ADR's.

168. During a period in which a suspension of trading is in effect, defendant National Quotation Bureau, Inc. will refuse to list market makers in the suspended security. In the past few years, the National Quotation Bureau, Inc, has adopted the practice of listing all suspended securities in the pink sheets along with the words: "suspended by the S.E.C."

169. At the time trading was suspended in Rolls-Royce ADR's, Rolls Royce was being redistributed because it's English stockholders were selling and, concurrently, the American investing public was buying for speculative reasons in response to wide media coverage of the Rolls-Royce bankruptcy situation. The S.E.C. suspended trading in Rolls-Royce ADR's to discourage the excessive speculation which seemed to be taking place.

170. The S.E.C. was ultimately proven wrong because the English

government later agreed to buy back the Rolls-Royce ADR's at a substantially higher price than the price at which they were trading when the S.E.C. ordered the suspension.

171. By suspending trading in Rolls-Royce ADR's, the S.E.C. deprived the American investing public of the profits it would have realized had it been permitted to continue to purchase Rolls-Royce ADR's during the period the trading suspension was in effect.

172. On November 29, 1973, the S.E.C. suspended trading in Canadian Javelin Ltd. On the same day the S.E.C. filed a complaint in the United States District Court for the Southern District of New York, thereby commencing a lawsuit entitled S.E.C. v. Canadian Javelin Ltd. (73 Civil 5074 (LFM)) (CCH Fed. Sec. Law Rep. # 94226 (1973 transfer binder.))

173. Prior to Nov. 29, 1973, Sloan had commenced his own lawsuit against Canadian Javelin Ltd. A proposed amended complaint Dated Nov. 7, 1973, contained allegations which closely paralleled allegations contained in the complaint subsequently filed by the S.E.C.

174. In Exchange Act Release No. 10534, issued on Nov. 29, 1973, the S.E.C. stated that "Trading in the securities of Javelin was suspended in order to allow dissemination of the allegations in the Commission's complaint."

175. However, in response to motion papers filed by Sloan in June, 1974 in which Sloan asked the court to order the termination of the suspension of trading in Canadian Javelin Ltd., the S.E.C. filed a 24 page memorandum of law which implied that the S.E.C. was continuing to suspend trading in Canadian Javelin Std. for an entirely different reason which was that Canadian Javelin Ltd. had failed to file it's Form 10-K and 10-Q's on a timely basis.

176. Since that time, Canadian Javelin Ltd. has filed it's form 10-K for Dec. 31, 1973 and several form 8-K's with the S.E.C. and has mailed it's annual report to the shareholders. This annual report contains a certified financial statement for Canadian Javelin Ltd.

177. The S.E.C. has continued to suspend trading in shares of Canadian Javelin Ltd. for successive ten day periods until the present. The most recent ten day suspension terminates on October 24, 1974.

178. Throughout this period, Sloan has been the registered owner of 13 shares of Canadian Javelin Ltd.

179. While the suspension of trading has been in effect, Sloan has been prohibited by virtue of Sections 15(c)(5) and 19(a)(4) of the Exchange Act from effecting a sale of these shares of Canadian Javelin Ltd.

180. With the exception of a brief period, shares of Canadian Javelin Ltd. have continued to trade actively on the Montreal Stock Exchange and the Vancouver Stock Exchange.

181. As a U.S. resident, Sloan is prohibited by the order of the S.E.C. suspending trading in Canadian Javelin Ltd. from selling his shares on the Montreal Stock Exchange and on the Vancouver Stock Exchange.

182. According to some interpretations of Sections 15(c) (5) and 19(a) (4), a suspension of trading also prohibits broker-dealers from making deliveries and completing existing contracts in suspended securities.

183. On numerous occasions, Sloan has called the S.E.C. division of Legal Interpretation in New York at their number at 264-1616 in order to ask questions concerning the Exchange Act and the rules promulgated thereunder.

184. Almost invariably, the Division of Legal Interpretation has told Sloan that his question was difficult and has advised Sloan to call the Washington D.C. office of the S.E.C.

185. On several occasions when Sloan has called the Washington D.C. office of the S.E.C. he has been told that they could not answer his question either and that he should write a letter.

186. In some cases, Sloan has experienced waits ranging from 3 to 6 months receiving a reply to his letters.

187. Sloan wrote letters to Larry Grimes of the S.E.C. regarding Canadian Javelin Ltd. Sloan still has not received a reply to any of his letters.

188. The S.E.C. takes the position that it has no obligation to notify the public as to the reasons for suspending trading in a security.

189. In many cases the public has never been informed of the real reasons that the S.E.C. has suspended trading in a particular security.

190. Although the S.E.C. generally gives a reason for the initial suspension of trading, it never gives a reason when the suspension of trading is continued for a further ten day period. However, sometimes the S.E.C. will issue a release at the time the suspension of trading is terminated giving reasons for which the suspension of trading was continued for more than one ten day period.

191. The S.E.C. does not have any authority to regulate the National Quotation Bureau, Inc.

192. There is no single person employed by the S.E.C. who can be said to be an authority on the Exchange Act or on all of the rules and regulations promulgated thereunder.

193. Since the time that Rule 15c2-11 was promulgated, the S.E.C. has adopted a new policy. That policy is to generally suspend trading in a security for a ten day period only. Once that ten day period expires, the S.E.C. prevents the security from being traded by taking measures to insure that rule 15c2-11 is complied with.

194. The most frequent reason for the suspension of trading by the S.E.C. is that the issuer has failed to file reports with the S.E.C. on a timely basis.

195. On April 11, 1974, the S.E.C. issued Exchange Act Release No. 10732. That release stated:

> "The Securities and Exchange Commission announced pursuant to Section 15(c)(5) of the Securities Exchange act of 1934 ("Exchange Act") the temporary suspension of over-the-counter trading for a ten-day period commencing at 10:45 a.m. (EDT) on April 11, 1974 and terminating at midnight(EDT) on April 20, 1974 of the securities of the

following issuers which have failed to file with the Commission Annual reports on Form 10-K for fiscial year ended 1972 and thereafter and some or all of the reports on Form 10-Q also requested to be filed."

196. Exchange Act Release No. 10732 then listed a total of 48 securities which were the subject of this suspension of trading.

197. Sloan had at one time or another been listed in the pink sheets under only three of these 48 securities. They were Hemisphere Hotels Corp., International Hydrolines, Inc., and Sheffield Watch Corp.

198. At the time of the suspension of trading, Sheffield Watch Corp. was undergoing bankruptcy proceedings before Judge Ryan, Bankruptcy Referee for the Southern District of New York.

199. At the time of the suspension of trading Sloan was the owner of $38,000 Sheffield Watch 7 1/4% convertable subordinated debentures due 1984. Sloan is still the owner of these debentures.

200. While this suspension of trading was in effect, Sloan was prohibited from selling the Sheffield Watch bonds and the bonds were, in effect, worthless.

201. In Sept. 1974, Judge Ryan approved a plan of reorganization which gave the Sheffield Watch bonds a value of approximately 12%.

202. On this basis, the bonds owned by Sloan are worth approximately $4650.00.

203. The S.E.C. acted in an arbritrary and capricious manner in suspending trading in securities of Sheffield Watch Corp., in that all the information required by Form 10-K and 10-Q had been filed in Judge Ryan's Court in a different form. Copies of these filings in the bankruptcy court were provided to the S.E.C.

204. On Nov. 21, 1972, the S.E.C. issued Exchange Act Release No. 9873. That release announced that the S.E.C. had suspended trading in the common and prefered stock of Stirling Homex Corp. for a ten day period commencing at

12:00 p.m. (EST) on Nov. 21, 1973. The release stated:

"The Suspension was ordered because of unavailibility of adaquate and accurate information concerning the company, it's operations and financial condition."

205. Exchange Act Release No. 9873 further stated:

"By letter dated Oct. 30, 1972, Frank G. Raichle, trustee for Stirling in reorganization, requested that the Commission suspend trading in the companies common and preferred stock. Mr. Raichle stated in support of his request that he has been advised by S.D. Leidesorf and Co. auditors who have been appointed to marshall the assets of the company, that they have been unable to complete a balance sheet for stirling for it's fiscial year ended July 31, 1972."

206. After the suspension of trading was terminated, Sloan submitted quotation cards to the National Quotation Bureau, Inc. in order to list common and preferred shares of Stirling Homex Corp. in the pink sheets. These cards were returned with the words "Form 211" stamped accross them.

207. At a later date, Sloan submitted a Form 211 to the National Quotation Bureau, Inc. for Stirling Homex Corp.

208. After about two weeks of hagling with Ira Spindler of the S.E.C. regarding Stirling Homex Corp., the S.E.C. permitted Sloan to list the common and preferred shares of Stirling Homex Corp. on a "in name only" basis.

209. After rule 15c2-11 was promulgated, Sloan adopted the practice of generally listing securities in the pink sheets on a "in name only" basis rather than providing price quotations.

210. Defendant National Quotation Bureau, Inc. has attempted to discourage this practice by broker-dealers.

211. The S.E.C. takes the position that any information that has not been filed with the S.E.C. has not been made public.

212. The S.E.C. takes the position that anything filed with the S.E.C. is public.

213. The material on file with the S.E.C. is not available to a member of the public unless the member of the public goes to one of the offices of the S.E.C. for the purpose of looking at such materials or unless the member of the public is prepared to order the material from Disclousure, Inc.

at the rate of 15¢ per page. Lower rates becaome available from Disclosure Inc. as the size of the purchase becomes larger. An individual interested in obtaining copies of material on file with the S.E.C. may also use the S.E.C. photocopy machines in the public reference room of the S.E.C. which requires 10¢ a copy.

214. Disclosure, Inc. is the recipient of a goverment contract giving it the exclusive right to reproduce material filed with the S.E.C. for sale to the public.

215. Disclosure, Inc. operates a monopoly. The existance of this monopoly has injured Sloan because of the excessive rates which he must pay if he wishes to obtain a copy of any reports filed with the S.E.C. pursuant to Section 12(G) of the Exchange Act and other sections of that act. The existance of this monopoly has also injured Sloan because the so-called "public" information is not truly public.

216. Sometimes advertisements appear in newspapers which seek to purchase shares of suspended securities.

217. The S.E.C. takes the position that any transactions consumated as a result of these newspaper advertisements are violations of Sections 15(c)(5) or 19(a)(4) of the Exchange Act.

218. Sloan is the owner of 7175 Carousel Fashions Inc. com. and 800 Vendotronics Corp. com.

219. These securities are no longer listed in the pink sheets.

220. Sloan is the owner of approximately 150 securities of different corperations. Most of these securities are no longer listed in the pink sheets. All of them were at one time or another listed in the pink sheets.

221. These securities are no longer listed in the pink sheets as a result of the effect of Rule 15c2-11.

222. On December 15, 1972, the S.E.C. issued Exchange Act Release No. 9921 announcing that the S.E.C. had ordered the temporary suspension of the over-the-counter trading in the common stock of Triex International Corp. ("Triex")

for a ten day period commencing at 10:00 a.m. (EST) Dec. 15, 1972. That release stated:

"The suspension was ordered because of the unavailability of current adequate and accurate information concerning the company, it's operations and financial condition, and because of the unusual recent market activity in Triex's securities and the lack of information to account for this activity."

223. At the time of the suspension of trading in Triex shares, Sloan was a market maker in Triex and was short 400 shares. Sloan had open fails to deliver of 1200 Triex shares.

224. The S.E.C. continued the suspension of trading in Triex for successive ten day periods until midnight Dec. 23, 1973.

225. On Dec. 19, 1973, the S.E.C. issued Exchange Act Release No. 10571. That release stated:

"Triex has informed the Commission that it is without funds to retain professional accounting personnel to prepare financial statements and therefore, there is still no current, adequate and accurate information available concerning Triex. Triex also has been unable to obtain the services of a stock transfer agent. In addition, the Triex's stock Transfer records are inaccurate and out of date.

226. Exchange Act Release No. 10571 gave no reason for lifting the suspension of trading in Triex and made it appear that little had changed during the year in which Triex was suspended.

227. On June 8, 1973 the S.E.C. issued a interpretative release of S.E.C. rule 15c(3)-1 announcing that broker-dealers would be required to deduct from net capital the dollar value of any fails to deliver in suspended securities.

228. As a result of this release, Sloan was required to take a $11,000 capital deduction representing his fails to deliver in Triex International Corp.

229. Since the suspension of trading was lifted, Triex International Corp.has never appeared in the pink sheets or on NASDAQ.

230. Sloan is still short 400 shares of Triex International, Inc. He has never completed delivery on any of the 1200 shares which constitute his open fails to deliver.

231. Since Dec. 12, 1972, most of the brokers with whom Sloan

had open fail positions in Triex have gone out of business. As a result, it is unclear how many of these fail positions are still good.

232. In September, 1974, Sloan submitted a Form 211 to the National Quotation Bureau, Inc. for Triex.

233. Sloan wanted to go into the pink sheets in Triex so that he could cover his short and complete his open fail to deliver contracts and hopefully realize a profit thereby.

234. These fail to deliver contracts, if they are still good, have a value of $11,000.00

235. The Form 211 submitted by Sloan sought a listing in the pink sheets "in name only" without a bid or an asked price.

236. The National Quotation Bureau, Inc. forwarded the Form 211 submitted by Sloan to the S.E.C.

237. Subsequently, Sloan spoke to Ira Spindler of the S.E.C. Mr. Spindler told Sloan that the S.E.C. had no power to stop quotations "in name only". However, Mr. Spindler also told Sloan that he understood that the National Quotation Bureau, Inc. had a rule which prohibited initial quotations "in name only". Mr. Spindler also told Sloan that if he entered a quotation for Triex the S.E.C. would probably commence enforcement proceedings against Sloan.

238. Sloan then spoke to an employee of the National Quotation Bureau, Inc. This individual told Sloan that the National Quotation Bureau, Inc. would not permit Sloan to list Triex in the pink sheets unless and until Sloan became a subscriber to the pink sheets. Previously, Sloan had been told that he could not become a subscriber to the pink sheets unless and until he paid his bill to the National Quotation Bureau, Inc. which comes to a sum of money in excess of $1700.00.

239. There is no quoted market for shares of Triex anywhere.

240. For these reasons, Sloan will not be able to cover his short position in Triex unless and until he pays the National Quotation Bureau Inc. $1755.87 .

241. The amount in controversy in this dispute exceeds the sum of $10,000.00 exclusive of cost and interest.

242. On June 21, 1971, William Nortman met with Roy L. Weiss, who was then Sloan's attorney, at the offices of the S.E.C. at 26 Federal Plaza. A few minutes prior to this meeting the S.E.C. had obtained a temporary restraining order against Sloan.

243. Nortman told Weiss that the S.E.C. wanted Sloan to file a certified financial statement with the S.E.C. as of a current date.

244. Nortman told Weiss that Sloan's then accountant, Raymond Leon, was not acceptable to the S.E.C.

245. Joseph Barton, who was then head of the broker-dealer inspection division of the S.E.C. called a personal friend of his, Robert W. Taylor, ("Taylor") who was both an accountant and an attorney, and asked Taylor if he would perform accounting services for Sloan.

246. Later that day, Sloan and Weiss went to Taylor's office at 160 Broadway and Sloan hired Taylor as his accountant.

247. On July 29, 1971, Taylor filed with the S.E.C. a certified financial statement of Sloan & Co. as at June 30, 1971.

248. The S.E.C. refused to accept this filing as an X-17A-5 report.

249. In April, 1972, the S.E.C. commenced an administrative proceeding against Sloan alleging a failure by Sloan to file an X-17A-5 report.

250. Sloan hired Taylor to represent him as his attorney in this administrative proceeding. Taylor filed a notice of appearance as Sloan's attorney in this proceeding.

251. In August, 1972, Taylor filed with the S.E.C. a certified X-17A-5 report for Sloan & Co. as at July 31, 1972. The S.E.C. refused to accept the filing of this report.

252. Sloan paid Taylor $800 to prepare this report.

253. At a later date, an S.E.C. attorney told Sloan on the telephone that the S.E.C. had refused to accept this X-17A-5 filing because Taylor could not act as both attorney and accountant for Sloan. The S.E.C. attorney told Sloan that unless Sloan hired a new accountant and filed a new X-17A-5 report for a date during the year of 1972, Sloan would face possible administrative proceedings.

254. In December, 1972, Sloan hired a new accountant named Robert Falk.

255. In Feburary, 1973, Robert Falk filed a certified X-17A-5 report with the S.E.C. reflecting the financial condition of Sloan & Co. as at Dec. 31, 1972. This filing was accepted by the S.E.C.

256. Sloan paid Falk $1400 to prepare this report.

257. In 1973, a staff investigator of the S.E.C. came to Sloan's office at 11 Broadway and asked him questions concerning Robert W. Taylor.

258. This staff investigator required Sloan to produce all bills and correspondence between Taylor and Sloan and all cancelled checks reflecting payments by Sloan to Taylor. The staff investigator also asked to see Sloan's general ledger of expense accounts for accounting and legal services rendered.

259. Sloan produced all the required material with the exception of one check which he could not locate immediately.

260. The staff attorney studied Sloan's ledger books and expressed interest in an item entitled "Lawson Tayloring ." until Sloan explained that this item reflected a payment to a tuxedo rental firm.

261. At the request of the S.E.C. staff investigator, Sloan sent an employee, Hafdis Simonarson, to make photocopies of all the material he had produced. When she returned, Sloan provided these photocopies to the S.E.C. investigator.

262. During succeeding days the S.E.C. investigator continued to call Sloan concerning the one check payable to Taylor that Sloan had not been able to locate. Finally, Sloan

found the check and mailed a photocopy thereof to the S.E.C. investigator.

263. It was apparent to Sloan that the S.E.C. was investigating Taylor. By this time, Joseph Barton had retired from the S.E.C.

COUNT I

264. Plantiff repeats and realleges each and every allegation contained in paragraphs 1 through 263 of this complaint.

265. An action is brought under this count for declaratory relief declaring the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder to be unconstitutional.

266. Plaintiff avers that the authority of the S.E.C. to promulgate rules under various sections of the Exchange Act is an unconstitutional delegation of authority by the Congress and the President of the United States and is prohibited by Article 1, Section 1 of the United States Constitution.

267. Plaintiff avers that the Exchange Act and the rules promulgated thereunder are unconstitutionally vague and uncertain, that they violate the rights guaranteed by the Bill of Rights and the Fourteenth Amendment to the United States Constitution, that they deprive plaintiff of liberty and property without due process of law, that they violate the rught to contract and other constitutional rights and that they exceed the authority accorded to the United States by Article 1, Section 3, Clause 3, (the Commerce Clause) of the United States Constitution.

268. Plaintiff avers that Section 27 of the Exchange Act (15 U.S.C. 78aa) is unconstitutional in that it interferes with the jurisdiction of the state courts and that it violates other constitutional rights.

269. Plaintiff avers that Sections 15(c)(5) and 19(a)(4) of the Exchange Act are unconstitional in that they

permit a denial of "liberty" and "property" without due process of law and they violate other constitutional rights.

270. Plaintiff avers that Sections 15(c)(5) and 19(a)(4) of the Exchange Act are unconstitional in that they violate the right of contract. (See Allgeyer V. Louisiana (1897) 165 U.S. 578, 17S. Ct. 427, 41 L. Ed. 832.)

271. Plaintiff avers that Rule 15c2-11 is unconstitutionally vague and uncertain, that it deprives plaintiff of liberty and property without due process of law, and that it exceeds the authority granted to the United States under the commerce clause, and that it violates other rights guaranteed by the United States Constitution.

272. Plaintiff avers that Rule 15c3-1 and Rule 17a-5 promulgated under the Exchange Act are unconstitutionally vague and uncertain and violate the rights guaranteed under the Fifth and Fourteenth Amendment to the United States Constitution and the rights guarenteed by other sections of the United States Constitution.

273. Plaintiff avers that Section 12(g) of the Exchange Act and the rules promulgated thereunder, particularly those rules which require the filing of Forms 10-K and 10-Q with the S.E.C. together with the filing fees, are unconstitutional in that they constitute a deprivation of liberty and property without due process of law.

274. Plaintiff avers that the filing fees are unconstitional because many 12(g) reporting companies cannot afford to pay the filing fees and as a result have been suspended from trading for failure to file the 12(g) reports.

COUNT II

275. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 274 of this complaint.

276. This count seeks money damages and declaratory relief declaring certain specific acts of the S.E.C. to be and have been unconstitutional and to be and have been

arbitrary, capricious, and an abuse of delagated authority.

277. Plaintiff avers that the suspension of trading in securities of each and every corporation listed in paragraph 145 of this complaint by the S.E.C. was unconstitutional as well as arbitrary, capricious, and an abuse of delegated authority.

278. In the case of each of these suspensions of trading, plaintiff has been injured because he could not make a market in the securities of these companies while the trading suspension was in effect. In addition, plaintiff has been injured because he could not sell his long positions or cover his short positions while the trading suspension was in effect. Furthermore, plaintiff was injured because he was forced by the S.E.C. interpretation of 15c3-1 to take substantial deductions from his net capital to reflect the fact that trading had been suspended in these securities. These net capital deductions forced Sloan to limit the amount of business he was doing.

279. Plaintiff avers that by calling Sloan's mother as alleged in paragraph 142 of this complaint, the S.E.C. violated Sloan's constitutional rights including the right of privacy.

280. Plaintiff avers that the conduct of the S.E.C. described in paragraph 143 of this complaint violated Sloan's constitional rights including the right of privacy, the right to be free from fear from government intervention into his personal affairs and other rights.

281. Plaintiff avers that by accosting Sloan's secretary as alleged in paragraph 140 of the complaint, the S.E.C. violated Sloan's constitutional rights and abused the authority delegated to it.

282. Plaintiff avers that by sending a staff investigator of the S.E.C. to Sloan's office pursuant to an investigation by the S.E.C. of Sloan's attorney and former accountant Robert W. Taylor, as alleged in paragraphs 257-262 of the complaint, the S.E.C. violated Sloan's constitutional

rights including the right of privacy and, in addition, plaintiff avers that this visit violated Sloan's right to enjoy attorney-client priviledge.

283. Plaintiff avers that the failure of the S.E.C. to accept broker-dealer filings as alleged in paragraphs 4,6,99,137, 138,248,and 253 of the complaint to be arbitrary, capricious, an abuse of delegated authority and unconstitutional.

284. Plaintiff avers that the refusal by the S.E.C. to permit plaintiff to withdraw as a broker-dealer is arbitrary, capricious, and an abuse of delaged authority and unconstitutional.

285. Under this count, plaintiff is entitled to recover damages in the amount of $5,000,000 from the Securities and Exchange Commission, individually and severally and $5,000,000 from the United States of America as the Securities and Exchange Commission.

286. In addition, plaintiff is entitled to declaratory relief under this count.

287. Plaintiff avers that requiring Sloan to submit a second form X-17A-5 as alleged in paragraph 254 of this complaint, was an unconstitutional act.

288. Plaintiff avers that he should not be required to make future X-17A-5 filings and other filings especially since he is not presently actively doing business.

289. COUNT III

Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 288 of this complaint.

290. An action is brought under this count for violations of Sections 1 and 2 of the Sherman Act (15 U.S.C. 1&2) and for violations fof Section 3 of the Clayton Act (15 U.S.C. 14) on the part of defendants National Quotation Bureau, Inc., Bunker Ramo Corp., National Association of Securities Dealers Inc., the Securities & Exchange Commission. the National Clearing Corp. and Disclosure, Inc.

291. Plaintiff has been injured by defendant National Quotation Bureau, Inc. because the National Quotation Bureau Inc.

operates the pink sheets which is a monopoly.

292. Existance of this monopoly has injured plaintiff because, as a result of the existance of this monopoly Sloan has been unable to make markets in the pink sheets from August 16, 1973 until the present. In addition, plaintiff has been injured because the rate structure imposed by the National Quotations Bureau, Inc. places a disproportionate financial burden on the market makers. Plaintiff is entitled to a refund of all subscription fees paid to the National Quotation Bureau, Inc. from June 1970 to the present.

293. Plaintiff has been injured by defendant Bunker Ramo Corp. because it owns NASDAQ, which is a monopoly, and because it has made contracts in restraint of trade with defendant National Association of Securities Dealers, Inc.

294. Plaintiff has been injured by defendant National Association of Securities Dealers, Inc. because it has made contracts in restraint of trade with defendant Bunker Ramo Corp, because it will not permit plaintiff to make markets on level III of NASDAQ, because it will not permit it's members to transact business with plaintiff on any terms other than the terms on which they transact business with customers.

295. Plaintiff has been injured by defendants Bunker Ramo Corp. and National Association of Securities Dealers, Inc. because they have entered into price fixing agreements with respect to NASDAQ in restraint of trade.

296. The existance of NASDAQ has injured plaintiff because he has been prohibited from becoming a participant in NASDAQ and because he has been unable to compete with market makers in securities listed in NASDAQ. As a result , Sloan has found it unprofitable to be listed in the pink sheets under securities which are also listed on NASDAQ. Sloan is entitled to recover the profits he would have realized if NASDAQ had not come into existance as well

as the profits he would have realized had he been able to make markets on NASDAQ plus punitive and exemplary damages.

297. Under this count, plaintiff has been damaged in the amount of $1,000,000 by defendant National Quotation Bureau, Inc. in the amount of $2,000,000 by defendant Bunker Ramo Corp., in the amount of 5,000,000 by defendant National Association of Securities Dealers Inc. and in the amount of $1,000,000 by National Clearing Corp. and in the amount of of $100,000 by Disclosure, Inc.

298. Plaintiff is entitled to recover these damages threefold in accordance with 15 U.S.C. 15.

COUNT IV

299. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 298 of this complaint.

300. An action is brough under this court based on Section 10(b) of the Exchange Act and Rule 10(b)-5 promulgated thereunder as well as common law fraud.

301. Defendants Bunker Ramo Corp. and National Association of Securities Dealers Inc. have committed acts of fraud by not permitting Sloan to make markets on NASDAQ, by reducing investor liquidity, by causing the negotiated market system to cease to function, and by charging excessive rates to participants in NASDAQ thereby causing many broker-dealers to stop making market.

302. Defendant National Quotation Bureau, Inc. has committed fradulent acts by refusing to permit Sloan to list his markets in the pink sheets and the yellow sheets, by rejecting quotation cards unless a Form 211 has been provided, and by cooperating with the S.E.C. in depriving Sloan of his constitional rights.

303. The Securities & Exchange Commission has committed fraudulent acts by suspending trading in Securities without giving adequate and accurate reasons therefore and by discouraging broker-dealers from entering quotations in the pink sheets.

304. Under this count, plaintiff has been damaged in the amount of $1,000,000 by defendant National Quotation Bureau

Inc. in the amount of $1,000,000 by defendant Bunker Ramo Corp., in the amount of $1,000,000 by defendant National Association of Securities Dealers, Inc. and National Clearing Corp., in the amount of $1,000,000 by the Securities & Exchange Commission, jointly and severally in the amount of $1,000,000 by the United States of America.

COUNT V

305. Plaintiff repeats and realleges each and every allegation contained in paragraph 1 through 304 of this complaint.

306. An action is brought under this count based upon common law and the doctrine of ancillary jurisdiction.

307. Plaintiff has been injured in the amount of $100,000 by the National Association of Securities Dealers, Inc. as a result of slanderous and defamatory statements made by Jack Thompson, an employee of the National Association of Securities Dealers, Inc., as alleged in paragraphs 90 and 91 of this complaint. Plaintiff is entitled to recover damages in that amount of $100,000 from this defendant.

308. Plaintiff has been injured to the extent of $200,000 by defendant Securities & Exchange Commission as the result of information given by an employee of the S.E.C. to Jack Thompson about Sloan regarding Albro Industries, Inc. and is entitled to recover damages in that amount.

309. Plaintiff is entitled to declaratory relief declaring that he does not owe $1755.87 or any other amount of money to defendant National Quotation Bureau, Inc.

WHEREFORE Plaintiff demands:

1) Judgement in the amount of $29,600,000

2) Declaratory relief declaring the Securities Exchange Act of 1934 and the rules promulgated thereunder to be unconstitutional.

3) Declaratory relief declaring certain specific acts of the S.E.C. to be and have been unconstitutional, arbitrary, capricious and an abuse of delegated authority.

4) Declaratory relief declaring that plaintiff does not owe $1755.87 or any other sum of money to defendant National Quotation Bureau, Inc.

5) That this action be tried by jury.

Samuel H. Sloan

Samuel H. Sloan, pro se
120 Liberty St.
New York, N.Y. 10006
(212)227-5816
(212)538-6437

Sworn to before me this 21
day of October, 1974

Nora A Tate

NOTARY PUBLIC

NORA A. TATE
Notary Public, State of New York
No. 03-9207177
Qualified in Bronx County
Commission Expires March 30, 1976

A66

SUMMONS IN A CIVIL ACTION

CIV. 1 (2-64)
(Formerly D. C. Form No. 45 Rev. (6-49))

United States District Court

FOR THE

Southern District of New York

74 CIVIL ACTION FILE NO. 2742

Samuel H. Scan

Samuel H. Scan Co

Plaintiff

v.

Securities & Exchange Comm

United States of America

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon Samuel H. Scan

plaintiff's attorney whose address

120 Liberty St.
New York N.Y. 10006

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Clerk of Court.

E A Becker

Deputy Clerk.

[Seal of Court]

Date NOV 6 1974

NOTE: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

No. 16184

☆U. S. GOVERNMENT PRINTING OFFICE: 1973—521-458

A67

VICE S RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (*No. 5*) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: Samuel H. Sloan & Co

COURT NUMBER: 74 Civ. 2792

DEFENDANT: United States of America

TYPE OF WRIT: Amend. S&C

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN: United States of America

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code): U.S. Attorney

TO NAME AND ADDRESS BELOW:

SLOAN
, St.
, N.Y. 10006

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.: NO. 1 OF TOTAL 1

CHECK IF APPLICABLE:

☒ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

RECEIPT FOR CERTIFIED MAIL—30¢

SENT TO: THE ATTORNEY GENERAL
STREET AND NO. DEPARTMENT OF JUST
P.O. STATE AND ZIP CODE WASHINGTON, D.C.

OPTIONAL SERVICES FOR ADDITIONAL FEES
RETURN RECEIPT SERVICES
1. Shows to whom and date delivered
With delivery to addressee only
2. Shows to whom, date and where delivered
With delivery to addressee only
DELIVER TO ADDRESSEE ONLY
SPECIAL DELIVERY (extra fee required)

PS Form 3800 Apr. 1971 NO INSURANCE COVERAGE PROVIDED NOT FOR INTERNATIONAL MAIL

(Postmaster, for fee and check box(es) for additional service(s) requested)
Show to whom and date delivered
Show to whom, date and address of delivery (extra charge)
RESTRICTED DELIVERY (extra charge)
RETURN RECEIPT SHOWING TO WHOM AND DATE DELIVERED
RETURN RECEIPT SHOWING TO WHOM, DATE AND ADDRESS OF DELIVERY
(CONSULT POSTMASTER FOR FEES)

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: Samuel H. Sloan

TELEPHONE NUMBER: (212) 583-6437

DATE: Nov. 6, 1974

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (*or applicable code*) and sign USM-285 for first writ only if more than one writ submitted.

DEPOSIT/CODE | DIST. OF ORIGIN 74 | DISTRICT TO SERVE | LOCATION OF SUB-OFFICE OF DIST. TO SERVE

I acknowledge receipt for the total number of writs indicated and for the deposit (*if applicable*) shown.

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK: D Hunter

DATE: 11/6/74

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (*If not shown above*): Henry Wong - legal clerk.

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

ADDRESS (*Complete only if different than shown above*)

FEE (*If applicable*): $3.—

MILEAGE: $.36

DATE(S) OF ENDEAVOR (*Use Remarks if necessary*)

DATE OF SERVICE: 11/8/74

TIME: AM PM

SIGNATURE OF U.S. MARSHAL OR DEPUTY: M Keegan

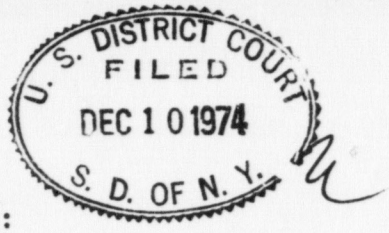
REMARKS

mailed copy at 90 Church St.

DCJ —

USM-285 (Ed. 7-1-70)

1 - CLERK OF THE COURT



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN,

Plaintiff,

v.

SECURITIES AND EXCHANGE COMMISSION, et al.

Defendants.

74 Civil 2792 (TPG)

ANSWER

The defendant Securities and Exchange Commission, by its undersigned attorneys, answers the plaintiff's Complaint as follows:

1. The Securities and Exchange Commission ("the Commission") denies that the Court has jurisdiction of this action against it and states that exclusive jurisdiction to review orders entered by it pursuant to the Securities Exchange Act of 1934 is conferred upon the United States Courts of Appeals by Section 25 of that Act, 15 U.S.C. 78y.

2. The Commission admits the allegations contained in paragraphs 3, 5, 11, 25, 47, 51, 52, 55, 56, 62, 63, 65, 70, 71, 72, 80, 92, 119, 136, 138, 139, 142, 145, 161, 162, 164, 166, 172, 174, 180, 195, 196, 198, 204, 205, 213, 214, 219, 224, 225, 227, 243, 247, 249, 250, 253, and 255 of the complaint.

3. In response to the allegations contained in paragraph 4 the Commission (a) states that it is without sufficient knowledge or information to form a belief as to whether Sloan & Co.

was originally a partnership based upon an oral partnership agreement between Samuel H. Sloan ("Sloan") and Harry G. Theodos ("Theodos") or as to whether on January 11, 1971, Sloan and Theodos terminated their partnership agreement by a written agreement dated January 11; (b) admits each and every other allegation contained in paragraph 4; and (c) avers that Sloan's attempts to amend the broker-dealer registration of Sloan & Co. were rejected because of the absence of current financial information required by Commission rules.

4. The Commission states that paragraphs 6, 20, 30, 49, 60, 61, 167, 179, 181, 182, 191, 215, 217, 266, 267, 268, 269, 270, 271, 272, 273, 274, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 307, 308 and 309 contain only conclusions of law as to which no responsive pleading is required. The Commission denies that the plaintiff has been injured in any cognizable sense by any act or omission of the Commission.

5. The Commission denies each and every allegation contained in paragraphs 7, 64, 68, 73, 93, 171, 188, 189, 193, 211, 212, 241, and 244 of the complaint.

6. With respect to the allegations of paragraph 8 of the Complaint, the Commission admits that the United States is a sovereignty, admits that the Commission consists of five individual Commissioners who are appointed by the President with the approval of Congress but denies that the five individual Commissioners have been sued herein individually as well as in their official capacity.

7. The Commission states that it is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 53, 54, 74, 75, 76, 77, 78, 79, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 141, 144, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 163, 165, 168, 170, 173, 178, 179, 183, 184, 185, 186, 192, 197, 199, 201, 202, 206, 207, 209, 210, 216, 218, 220, 221, 2[illegible] 228, 229, 230, 231, 232, 233, 234, 235, 236, 238, 239, 240, 246, 252, 254, and 256 of the Complaint.

8. With respect to the allegations contained in paragraph 50 of the Complaint the Commission denies that proposed Rule 15c2-10 has been promulgated but avers that if promulgated, the rule would regulate automated quotation systems. The Commission is without sufficient knowledge or information to admit or deny the other allegations contained in paragraph 50.

9. With respect to the allegations contained in paragraph 57, the Commission admits that Mr. Ira Spindler participates in the processing of Form 211 at the New York Regional Office.

10. The Commission states that the allegations contained in paragraph 58 of the Complaint do not set forth a complete and accurate description of the Commission's procedures and states

that when, after examination of a Form 211, it appears to the staff that a broker's listing of quotations for a particular security in the pink sheets might entail violation of the Commission's rules, a member of the staff will so inform the broker, particularizing the potential violation.

11. With respect to the allegations contained in paragraph 59, the Commission states that in most cases broker-dealers withdraw their Form 211s if advised by the Commission's staff that the proposed listing will be in violation of the Commission's Rules.

12. The Commission denies that the allegations of paragraph 66 of the Complaint accurately set forth a policy of the Commission with respect to the time at which trading suspensions take effect and states that a trading suspension takes place whenever the Commission orders such suspensions.

13. With respect to paragraph 67 of the Complaint, the Commission states that following an order suspending trading in a security, the Commission notifies all market-makers listed in the pink sheets in that security as expeditiously as possible.

14. With respect to the allegations of paragraph 69, the Commission states that the Dow Jones News Service and the Wall Street Journal both generally report trading suspension orders entered by the Commission but avers that the Commission exercises no control over any aspects of their publications including the time frame in which they publish such information.

15. With respect to the allegations of paragraph 137, the Commission denies that the Form BDW submitted by Mr. Sloan on August 16, 1973 was rejected for technical reasons and states that Sloan & Co.'s withdrawal as a broker-dealer was not allowed because in an administrative proceeding instituted by the Commission, an Initial Decision had already been rendered by an administrative law judge revoking Sloan & Co.'s registration as a broker-dealer. At the time of the attempted withdrawal, that Initial Decision was being appealed to the Commission by Sloan. The Commission admits that subsequent to August 16, 1973, Sloan submitted a second Form BDW.

16. With respect to the allegations of paragraph 140 of the Complaint, the Commission admits that on August 16, 1973, two Commission employees, Jerome Selvers and Sheldon Kanoff, unexpectedly visited Sloan & Co.'s offices and questioned his secretary, Helga Thorvardottir. The Commission denies any improper conduct with respect to that visit or with respect to the questioning of Miss Thorvardottir.

17. With respect to the allegations of paragraph 143 of the Complaint, the Commission (a) admits that on or about June 4, 1973, William Nortman, Assistant Regional Administrator for the Commission, wrote a letter to Hafdis Simonarson, asking her to come to the offices of the Commission to answer questions with respect to the business of Sloan & Co.; (b) admits that on April 18, 1974, Miss Simonarson, accompanied by Gerard A. Bannon, Jr.,

appeared at the Commission's offices; and (c) admits that based upon Miss Simonarson's statements the Commission's staff attorneys prepared an affidavit with respect to those statements which Miss Simonarson signed under oath; (d) the Commission admits that this affidavit was submitted to the United States District Court for the Southern District of New York with its response to a motion for a stay of injunction filed by Mr. Sloan in Securities and Exchange Commission v. Samuel H. Sloan, No. 71 Civ. 2695 (RJW), after entry of a permanent injunction against him; (e) the Commission admits that it has opposed Mr. Sloan's requests to take Miss Simonarson's deposition in No. 71 Civ. 2695, which requests were made after final judgment was entered and after Mr. Sloan had docketed an appeal from that judgment in the United States Court of Appeals for the Second Circuit; (f) the Commission denies that it or any of its employees knew or should have known that any of the statements made in Miss Simonarson's affidavit were untrue in any respect nor are they now aware that any of such statements are untrue in any respect; (g) the Commission is without sufficient knowledge or information to form a belief as to the truth of the other averments contained in paragraph 143 of the Complaint.

10. With respect to the allegations contained in paragraph 169, the Commission states that its reasons for suspending trading in Rolls-Royce ADR's are contained in Securities Exchange

Act Release No. 9104, the language of which is set forth in paragraph 166 of the Complaint. The Commission states that it is without sufficient knowledge or information to form a belief as to the truth of the other averments contained in paragraph 169 of the Complaint.

19. The Commission denies the allegations of paragraph 175 of the Complaint and states that the reason for the original suspension of trading in Canadian Javelin Ltd.'s securities was to allow dissemination of the allegations of the Commission's Complaint against Canadian Javelin. That Complaint included allegations that Canadian Javelin had failed to file its annual report on Form 10-K and other reports on a timely basis.

20. The Commission admits the allegations contained in paragraph 176 but states that Canadian Javelin's 10-K report for the period ending December 31, 1973 was filed long after it was due and after its filing had been ordered by the United States District Court for the Southern District in 73 Civ. 5074. The Commission further states that Canadian Javelin's filings are still not current despite the fact that the court in that action has ordered the company to make its filing current.

21. The Commission admits that it has continued to suspend trading in Canadian Javelin securities for successive ten-day periods until the present as alleged in paragraph 177 but states that the most recent ten-day suspension runs from December 4, 1974 until December 13, 1974.

22. The Commission admits that Sloan wrote letters to Larry Grimes, a staff attorney in the Commission's Division of Enforcement, with respect to Canadian Javelin and admits that these letters were not responded to in writing. The Commission states, however, that Mr. Grimes was in frequent contact with Mr. Sloan by telephone and states that Mr. Sloan's letters requesting a suspension of trading in Canadian Javelin securities were responded to by telephone.

23. The Commission denies that the allegations of paragraph 190 of the Complaint are an accurate description of the Commission's practices with respect to public statements concerning trading suspension. The Commission states that when a suspension is continued for a period beyond the initial ten-day period it usually does not state reasons for the continuation of the suspension because the conditions giving rise to the continued suspension are generally the same as those which occasioned the initial suspension. When a trading suspension is terminated the Commission issues a release which might make a variety of statements with respect to the security in question depending upon the circumstances.

24. With respect to the allegations of paragraph 194, the Commission states that the most frequent reason for trading suspension is the absence of adequate current information available to the public concerning the issuer of the securities suspended.

25. The Commission admits that during the trading suspension in Sheffield Watch securities Sloan was effectively prohibited from trading in Sheffield Watch bonds as alleged in paragraph 200 of the Complaint, and states that it is without sufficient knowledge or information to form a belief as to the truth of Sloan's averment that the bonds were, in effect, worthless.

26. With respect to the allegations contained in paragraph 203 of the Complaint, the Commission denies that it acted in an arbitrary and capricious way in suspending trading in the securities of Sheffield Watch Corp., admits that certain filings made by the company in bankruptcy proceedings were sent to the Commission but denies that those bankruptcy court filings satisfied the requirements of the Commission's Forms 10-K and 10-Q.

27. With respect to the allegations of paragraph 208, the Commission denies that it "permitted" Sloan to list the common and preferred shares of Stirling Homex Corp. on an "in name only" basis and states that Ira Spindler of the Commission's staff advised Mr. Sloan that such a listing absent price quotations would probably not be in violation of the Commission's Rule 15c2-11.

28. The Commission admits the allegations contained in paragraph 222 of the Complaint, but notes that the number of the Release announcing the suspension of trading in Triex Securities is Release No. 9912 not 9921 as stated in paragraph 22 of the Complaint.

29. With respect to the allegations of paragraph 237 of the Complaint, the Commission admits that Sloan spoke to Ira Spindler of the Commission's staff with respect to Sloan's attempts to list the securities of Triex in the pink sheets, admits that Spindler told Sloan that the Commission had no power to stop the listing of Triex "in name only" and admits that Spindler told Sloan that it was his understanding that the National Quotation Bureau would not accept an initial listing "in name only." The Commission states that Spindler told Sloan that if he entered a quotation for Triex in the pink sheets at that time he would probably be in violation of the Commission's Rules.

30. With respect to the allegations of paragraph 242 of the Complaint, the Commission admits that on or about June 21, 1971, William Nortman of the Commission's staff met with Roy L. Weiss, who was then Sloan's attorney, at the Commission's New York Regional Office, and also admits that this meeting occurred soon after the Commission had obtained a temporary restraining order against Sloan in the injunctive action referred to in paragraph 17 of this Answer.

31. With respect to the allegations contained in paragraph 245, the Commission states that it is without sufficient knowledge or information to form a belief as to the truth of the averments contained in paragraph 245 but states on information and belief that Joseph Barton, who is no longer in the employ of the Commission, may have suggested Robert W. Taylor to Mr. Sloan as a prospective accountant.

32. The Commission admits the allegation contained in paragraph 248 of the Complaint and states that a certified financial statement filed by Robert Taylor on behalf of Sloan & Co. on July 29, 1971, was filed pursuant to an order of the United States District Court for the Southern District of New York in Securities and Exchange Commission v. Samuel H. Sloan, No. 71 Civ. 2695 (RJW). The financial statement was not offered as an X-17A-5 report and was not designated or captioned as such. Accordingly, it was not received as an X-17A-5 report.

33. The Commission admits the allegation of paragraph 251 and states that the certified X-17A-5 prepared by Taylor was not accepted because Taylor, as Sloan's attorney, lacked the requisite independence to certify the report as an accountant.

34. The Commission states that it is without sufficient knowledge or information form a belief as to the truth of the averments contained in paragraphs 257, 258, 259, 260, 261 and 262 of the Complaint. The Commission states that as of this date it has not located any member of its staff who recalls the events described by the allegations of these paragraphs.

35. With respect to the allegations contained in paragraph 263 of the Complaint, the Commission states that Joseph Barton has left the employ of the Commission but states that the Commission lacks sufficient knowledge or information to form a belief as to when it was apparent to Sloan that the Commission was investigating him.

36. As to any allegations of the Plaintiff's Complaint not herein specifically admitted or denied such allegations are denied.

FIRST AFFIRMATIVE DEFENSE

37. This Court is without jurisdiction of this action against the Commission and exclusive jurisdiction to review the Commission orders complained of herein is conferred upon the United States Courts of Appeals.

SECOND AFFIRMATIVE DEFENSE

38. The Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

39. The plaintiff has failed to exhaust administrative remedies and has in no way sought relief before the Commission from the Commission's orders or Rules challenged in his Complaint.

FOURTH AFFIRMATIVE DEFENSE

40. The Commission is not liable in damages for acts done in the course of its official functions.

WHEREFORE, the Securities and Exchange Commission demands judgment dismissing the Complaint of the Plaintiff against it, together with such other and further relief as to this Court may seem just and proper.

Respectfully submitted,

Paul Gonson
Associate General Counsel

Thomas L. Taylor III
Attorney

Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549
(202) 755-1297

Of Counsel:

William D. Moran
Regional Administrator
Securities and Exchange Com.
26 Federal Plaza
New York, N.Y. 10007
Tel. (212) 264-1636

Dated: New York, N.Y.
December 10, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN,

Plaintiff,

v.

SECURITIES AND EXCHANGE COMMISSION, et al.

Defendants.

74 Civil 2792

CERTIFICATE OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CAROL A. KILHENNY, being duly sworn, deposes and says:

1. I am over 21 years of age and am employed by the U.S. Securities and Exchange Commission in its New York Regional Office as an attorney.

2. On December 10, 1974 I caused to be mailed a copy of the Answer to the following:

Robert Woldow, Esq.
1735 K St., N.W.
Washington, D.C. 20006
Counsel for National Clearing Corp.

Lloyd Derrickson, Esq.
1735 K. St. N.W.
Washington, D.C. 20006
Counsel for National Association of Securities Dealers, Inc.

Lloyd Derrickson, Esq.
1735 K. St., N.W.
Washington, D.C. 20006
Counsel for Bunker Ramo Corp.

George Brandt, Esq.
Rogers & Wells
200 Park Avenue
New York City, N.Y.
Counsel for National Quotation Bureau, Inc.

A81

Fred Jackson, Esq.
Senior Vice President and Corporation Counsel
Reliance Group Inc.
280 Park Avenue
New York, New York 10017

CAROL A. KILHENNY

Dated: New York, New York
December 10, 1974

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

DEC 13 11 20 AM '74
S.D. OF N.Y.

SAMUEL H. SLOAN SAMUEL H. SLOAN & CO. Plaintiffs -against- SECURITIES & EXCHANGE COMMISSION, UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION NATIONAL QUOTATION BUREAU, INC. BUNKER RAMO CORP. NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. DISCLOSURE, INC. NATIONAL CLEARING CORPORATION Defendants	ANSWER Civil Action No. 74 Civ. 2792 (TPG)

ANSWER OF DEFENDANT
BUNKER RAMO CORPORATION

Defendant BUNKER RAMO CORPORATION, through counsel, states as and for its Answer to the Complaint in this proceeding as follows:

1. Defendant denies each and every allegation contained in Paragraph One of the Complaint, except it admits that plaintiff purports to bring this action under those authorities specified therein.

2. Defendant denies each and every allegation of Paragraph Two of the Complaint.

3. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Three through Nine of the Complaint.

4. Defendant denies each and every allegation of the first sentence of Paragraph Ten of the Complaint except it admits that it is the owner of certain equipment which is utilized in the operation of the National Association of Securities Dealers Automated Quotation (NASDAQ) System, and that certain personnel employed by Defendant perform services in connection with the opera-

tion of the NASDAQ System. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in the second sentence of Paragraph Ten of the Complaint.

5. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Eleven of the Complaint.

6. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Twelve through Twenty-Three of the Complaint.

7. In answer to Paragraph Twenty-Four of the Complaint, Defendant states that the NASDAQ System became operational in its original form in 1971.

8. Defendant admits the allegations contained in Paragraph Twenty-Five of the Complaint.

9. Defendant denies each and every allegation contained in Paragraph Twenty-Six of the Complaint, except Defendant admits that the NASDAQ System is an electronic quotation system which, in the case of Level I Service, transmits quotations to distributors who in turn distribute quotations to broker/dealers and other subscribers, and, in the case of Level II and III Service, permits transmission of quotations entered by market makers to other market makers, broker/dealers, and other subscribers.

10. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Twenty-Seven and Twenty-Eight of the Complaint.

11. Defendant denies the allegations contained in Paragraphs Twenty-Nine through Thirty-One of the Complaint.

12. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Thirty-Two of the Complaint.

13. Defendant admits the allegations contained in the first sentence of Paragraph Thirty-Three of the Complaint. Defendant admits the allegations contained in the second sentence of Paragraph Thirty-Three of the Complaint, except that Defendant denies that a representative bid and asked quotation is

available for each security in the NASDAQ System. Defendant admits the allegations contained in the third sentence of Paragraph Thirty-Three of the Complaint, except that Defendant states that NASDAQ Level II Service is received on a NASDAQ terminal. Defendant admits the allegations contained in the fourth sentence of Paragraph Thirty-Three of the Complaint, except that Defendant states that NASDAQ Level III Service is received on a NASDAQ terminal which is not identical to that utilized for Level II Service.

14. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Thirty-Four through Forty-Nine of the Complaint.

15. In answer to Paragraph Fifty of the Complaint, Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in the first sentence of Paragraph Fifty. Defendant denies each and every allegation contained in the second sentence of Paragraph Fifty of the Complaint.

16. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Fifty-One through Eighty and Eighty-Two through One Hundred Ten of the Complaint, there being no paragraph designated as Paragraph Eighty-One.

17. In answer to Paragraph One Hundred Eleven of the Complaint, Defendant states that certain rates charged to subscribers to the NASDAQ System at the time of its initiation were enumerated in Schedule D to Defendant Association's By-Laws and were governed by a document executed by Defendant Bunker Ramo Corp. and Defendant National Association of Securities Dealers, Inc.

18. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs One Hundred Twelve and One Hundred Thirteen of the Complaint.

19. Defendant denies each and every allegation contained in Paragraph One Hundred Fourteen of the Complaint.

20. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs One Hundred Fifteen through

Two Hundred Forty of the Complaint.

21. Defendant denies each and every allegation contained in Paragraph Two Hundred Forty-One of the Complaint.

22. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Two Hundred Forty-Two through Two Hundred Sixty-Three of the Complaint.

23. In answer to Paragraph Two Hundred Sixty-Four of the Complaint, Defendant repeats and reasserts the answers set forth herein above to Paragraphs One through Two Hundred Sixty-Three of the Complaint.

24. Defendant states that Paragraphs Two Hundred Sixty-Five through Two Hundred Seventy-Four of the Complaint constitute assertions to which an answer by this Defendant is not required, except that Defendant admits that Plaintiff makes such assertions; to the extent such assertions may be found to constitute allegations against Defendant, each and every such allegation is denied.

25. In answer to Paragraph Two Hundred Seventy-Five of the Complaint, Defendant repeats and reasserts the answers set forth herein above to Paragraphs One through Two Hundred Seventy-Four of the Complaint.

26. Defendant states that Paragraphs Two Hundred Seventy-Six and Two Hundred Seventy-Seven of the Complaint constitute assertions by the Plaintiff to which an answer by this Defendant is not required, except that Defendant admits that Plaintiff makes such assertions; to the extent such assertions may be found to constitute allegations against Defendant, each and every such allegation is denied.

27. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Two Hundred Seventy-Eight of the Complaint.

28. Defendant states that Paragraphs Two Hundred Seventy-Nine through Two Hundred Eighty-Eight of the Complaint constitute assertions by the Plaintiff to which an answer by this Defendant is not required, except that Defendant admits that Plaintiff makes such assertions; to the extent such assertions

may be found to constitute allegations against Defendant, each and every such allegation is denied.

29. In answer to Paragraph Two Hundred Eighty-Nine of the Complaint, Defendant repeats and reasserts its answers set forth herein above to Paragraphs One through Two Hundred Eighty-Eight of the Complaint.

30. Defendant states that Paragraph Two Hundred Ninety of the Complaint constitutes an assertion of jurisdiction by the Plaintiff to which an answer by this Defendant is not required, but to the extent such assertions may be found to constitute allegations against this Defendant, Defendant denies each and every such allegation.

31. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Two Hundred Ninety-One and Two Hundred Ninety-Two of the Complaint.

32. Defendant denies each and every allegation contained in Paragraphs Two Hundred Ninety-Three through Two Hundred Ninety-Eight of the Complaint.

33. In answer to Paragraph Two Hundred Ninety-Nine of the Complaint, Defendant repeats and reasserts the answers set forth herein above to Paragraphs One through Two Hundred Ninety-Eight of the Complaint.

34. Defendant states that Paragraph Three Hundred of the Complaint constitutes an assertion of jurisdiction by the Plaintiff to which an answer by this Defendant is not required except that to the extent such assertion may be found to constitute allegations against this Defendant, Defendant denies each and every such allegation.

35. Defendant denies each and every allegation contained in Paragraph Three Hundred One of the Complaint.

36. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Three Hundred Two and Three Hundred Three of the Complaint.

37. Defendant denies each and every allegation contained in Paragraph Three Hundred Four of the Complaint.

38. In answer to Paragraph Three Hundred Five of the Complaint, Defendant repeats and reasserts the answers set forth herein above to Paragraphs One through Three Hundred Four of the Complaint.

39. Defendant states that Paragraph Three Hundred Six of the Complaint constitutes an assertion of jurisdiction to which an answer by this Defendant is not required, except that to the extent such assertion may be found to constitute allegations against this Defendant, Defendant denies each and every such allegation.

40. Defendant denies each and every allegation contained in Paragraphs Three Hundred Seven and Three Hundred Eight of the Complaint.

41. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Three Hundred Nine of the Complaint.

First Affirmative Defense

The Complaint fails to state a cause of action upon which relief can be granted.

Second Affirmative Defense

The claims alleged in the Complaint are barred by the applicable statutes of limitations and by the doctrine of laches.

Third Affirmative Defense

The Court does not have jurisdiction of the subject matter of this proceeding.

Fourth Affirmative Defense

The activities of Defendant related to the NASDAQ System are specifically exempted from the application of the anti-trust laws by Section 15A(n) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78o-3(n).

Fifth Affirmative Defense

The activities of Defendant relating to the NASDAQ System are impliedly exempt from the application of the anti-trust laws by the

Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a et seq., generally, by operation of the oversight exercised by the Securities and Exchange Commission.

Sixth Affirmative Defense

Primary and exclusive jurisdiction to adjudicate the allegations made against Defendant in the Complaint rests with the Securities and Exchange Commission.

WHEREFORE, Defendant prays this Court:

1. To dismiss the Complaint filed herein and award costs to the Defendant, and

2. To grant such other relief as this Court may deem appropriate.

BUNKER RAMO CORPORATION
Defendant

Lloyd J. Derrickson

Dennis C. Hensley
1735 K Street, N. W.
Washington, D.C. 20006

Attorneys for Defendant

Of Counsel:

BREED, ABBOTT & MORGAN
55th Floor
One Chase Manhattan Plaza
New York, New York 10005

Dated: December 10, 1974

AFFIDAVIT OF SERVICE BY MAIL

DISTRICT OF COLUMBIA) ss:

I, Dennis C. Hensley, one of the counsel for Defendant Bunker Ramo Corporation, being duly sworn, depose and say that I, this 10th day of December, 1974, have caused copies of the foregoing Answer of Defendant Bunker Ramo Corporation to be filed with the Clerk of the United States District Court for the Southern District of New York and have served said Answer upon all parties to this litigation by depositing a true copy of said Answer into the United States mail, postage prepaid, addressed to each of the persons listed below:

Samuel H. Sloan
120 Liberty Street
New York, New York 10006
Pro Se

The Honorable William B. Saxbe
Attorney General of the United States
Department of Justice
Constitution Avenue at 10th Street, NW
Washington, D.C.

Lawrence E. Nerheim, Esq.
Thomas L. Taylor, Esq.
Office of General Counsel
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Anthony Phillips, Esq.
Willkie-Farr & Gallagher
One Chase Manhattan Plaza
New York, New York 10005
Counsel for Disclosure, Inc.

George W. Brandt, Esq.
Rogers & Wells
Pan Am Building
200 Park Avenue
New York, New York 10017
Counsel for National Quotation Bureau

Robert Waldow
General Counsel & Vice President
National Clearing Corporation
1735 K Street, N. W.
Washington, D.C. 20006

Dennis C. Hensley

Sworn to before me this 10th day of December 1974.

Notary Public
My commission expires APRIL 14, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEC 13 11 28 AM '74
S.D. OF N.Y.

SAMUEL H. SLOAN
SAMUEL H. SLOAN & CO.

Plaintiffs,

-against-

SECURITIES & EXCHANGE COMMSSION
UNITED STATES OF AMERICA as the
SECURITIES & EXCHANGE COMMISSION
NATIONAL QUOTATION BUREAU, INC.
BUNKER RAMO CORP.
NATIONAL ASSOCIATION OF SECURITIES
DEALERS, INC.
DISCLOSURE, INC.
NATIONAL CLEARING CORP.

Defendants,

ANSWER

74 CIVIL 2792

(TPG)

Defendant, National Clearing Corporation (NCC), by its attorneys, Breed, Abbot & Morgan, answers the complaint herein.

ANSWER TO JURISDICTIONAL PARAGRAPHS
AND INTRODUCTORY PARAGRAPHS

1. Deny each and every averment in Paragraph 1, except admit that cause of action alleged purports to be brought under the Securities Exchange Act of 1934, Sections 1 and 2 of the Sherman Act, Section 3 of the Clayton Act, and the law of the State of New York and common law.

2. Deny each and every averment in Paragraph 2, except admit that Plaintiff purports that jurisdiction lies under Section 27 of the Securities Exchange Act of 1934, Section 4 of the Sherman Act, Section 4 of the Clayton Act, and under the doctrine of ancillary jurisdiction.

3. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 3, except admit that, at the time Plaintiff initially contacted Defendant National Clearing Corporation by telephone regarding membership, Plaintiff was a broker-dealer registered with the Securities Exchange Commission.

4. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 4.

5. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 5, except admit as to knowledge contained in the cited case.

6. Deny knowledge or information sufficient to form a belief as to the turth of the averments in paragraph 6.

7. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 7.

8. The averments appearing paragraph 8 do not require an answer on the part of Defendant National Clearing Corporation.

9. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 9.

10. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 10, except admit that Defendant National Clearing Corporation is the wholly owned clearing subsidiary of the National Association of Securities Dealers, a securities association registered with the Securities and Exchange Commission, pursuant to Section 15A of the Securities Exchange Act of 1934.

11. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 11 through 24.

12. Admit the averments in paragraph 25.

13. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 26 through 42.

14. Deny each and every averment in paragraph 43.

15. Deny each and every averment in paragraph 44, except admit that Defendant National Clearing Corporation received from Plaintiff correspondence regarding membership in Defendant National Clearing Corporation.

16. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 45.

17. Deny each and every averment in paragraph 46.

18. Deny each and every averment in paragraph 47, except admit that National Clearing Corporation is owned by Defendant National Association of Securities Dealers, Inc.

19. Deny each and every averment in paragraph 48, except admit that Defendant National Clearing Corporation currently operates a clearing facility for member broker-dealers on a continuous net settlement basis, in addition to other clearing services.

20. Deny each and every averment in paragraph 49.

21. Admit the averments in paragraph 50.

22. Admit the averments in paragraph 51.

23. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 52 through 59.

24. Deny each and every averment in paragraph 60, except admit that the Securities and Exchange Commission, pursuant to Section 15 (c)(5) and Section 19(a)(4) of the Securities Exchange Act of 1934, as amended, has the power to summarily suspend trading in securities which are not exempt from regulations under the '34 Act.

25. Deny each and every averment in paragraph 61, except admit that brokers or dealers are prohibited from making use of the mail or any other means or instrumentality of interstate commerce to effect any transactions in, or to induce the purchase or sale of, any security in which trading is so suspended.

26. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 62, except admit that Defendant National Clearing Corporation has knowledge that suspension in securities has taken place, that such supensions have been for a ten-day period, and that some suspensions have been renewed.

27. Admit the averments in paragraph 63.

28. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 64.

29. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 65, except admit that Defendant National Clearing Corporation has, from time to time, received SEC releases in the form described.

30. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 66 through 68.

31. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 69, except admit that National Clearing Corporation has, on occasion, seen announcements as to the suspension of a security on the Dow-Jones News Service and in the Wall Street Journal.

32. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 70 through 74.

33. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 75, except admit that Defendant National Clearing Corporation has knowledge that some securities which have been suspended never re-opened for trading and that some securities which were suspended have re-opened for trading at substantially lower prices than the price at which they traded prior to the suspension.

34. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 76 through 79.

35. Admit the averments in paragraph 80.

36. Paragraph 81 -omitted.

37. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 82 through 86.

38. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 87, except admit that Defendant National Clearing Corporation has knowledge that one Jim Yore was in 1973 an employee of Defendant National Association of Securities Dealers, Inc.

39. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 88 through 112.

40. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 113, except to admit that Greene & Co. is no longer in business.

41. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 114 through 144.

42. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 145 except admit that Defendant National Clearing Corporation has notice that the SEC has, at one time or another, suspended some of the securities listed therein.

43. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 146 through 160.

44. Admit the averments in paragraphs 161 through 162.

45. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 163.

46. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 164 except admit that Defendant National Clearing Corporation has notice that the SEC has suspended trading in Rolls Royce Ltd.

47. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 165.

48. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 166.

49. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 167 through 171.

50. Admit the averments in paragraph 172.

51. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 173.

52. Admit the averments in paragraph 174.

53. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 175 through 176.

54. Deny each and every averment in paragraph 177 except admit that Defendant National Clearing Corporation has knowledge that SEC

has suspended trading in shares of Canadian Javelin, Ltd.

55. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 178 through 181.

56. Deny each and every averment in paragraph 182, and state that the rules of the Defendant National Clearing Corporation provide that "the obligation of a Clearing Member to deliver or pay for any securities suspended from clearing under the provisions of this Rule 13 [which includes suspension of a security from the list of cleared securities because it has been suspended from trading by the Securities and Exchange Commission] whether or not delivery is to be accomplished through the facilities of the Clearing Corporation, shall not be affected if the transaction was entered into the clearing records of a Clearing Center prior to the Effective Date of the suspension."

57. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 183 through 194.

58. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 195 and 196.

59. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 197.

60. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 198.

61. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 199 through 203.

62. Admit the averments in paragraphs 204 and 205.

63. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 206 through 211.

64. Deny each and every averment in paragraph 212.

65. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 213 through 221.

66. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 222.

67. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 223.

68. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 224 and 225.

69. Deny knowledge or information sufficient to form a belief as to the truth of the averments contained in paragraph 226.

70. Admit the averments in paragraph 227.

71. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 228 through 248.

72. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 249.

73. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 250 through 263.

ANSWER TO COUNT I OF THE COMPLAINT

74. Answer the preceding paragraphs of this complaint as referred to and reaverred in paragraph 264 of Count I in the same manner as each such paragraph has previously been answered.

75. Deny each and every averment in paragraph 265 except admit that Plaintiff purports to bring this action under Count I for declaratory relief declaring the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder to be unconstitutional.

76. Deny each and every averment in paragraph 266.

77. Deny each and every averment in paragraph 267.

78. Deny each and every averment in paragraph 268.

79. Deny each and every averment in paragraph 269.

80. Deny each and every averment in paragraph 270.

81. Deny each and every averment in paragraph 271.

82. Deny each and every averment in paragraph 272.

83. Deny each and every averment in paragraph 273.

84. Deny each and every averment in paragraph 274.

ANSWER TO COUNT II OF THE COMPLAINT

85. Answer the preceeding paragraphs of this complaint as referred to and reaverred in paragraph 275 of Count II in the same manner as such paragraph has previously been answered.

86. Deny each and every averment in paragraph 276, except admit that Plaintiff purports to seek money damages and declaratory relief declaring certain specific acts of the Securities and Exchange Commission to be and have been unconstitutional and to be and have been arbitrary, capricious, and an abuse of delegated authority.

87. Deny each and every averment in paragraph 277.

88. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 278.

89. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 279.

90. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 280.

91. Deny knowledge or information sufficient to form a belief as to the truth of each and every averment in paragraphs 281 through 284.

92. Deny each and every averment in paragraph 285.

93. Deny each and every averment in paragraph 286.

94. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 287.

95. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 288.

ANSWER TO COUNT III OF THE COMPLAINT

96. Answer the preceding paragraphs of this complaint as referred to and reaverred in paragraph 289 of Count III in the same manner as each such paragraph has previously been answered.

97. Deny each and every averment in paragraph 290, except admit that Plaintiff purports to bring the action under Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

98. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 291.

99. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 292.

100. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 293.

101. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraphs 294.

102. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 295.

103. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 296.

104. Deny each and every averment in paragraph 297.

105. Deny each and every averment in paragraph 298.

ANSWER TO COUNT IV OF THE COMPLAINT

106. Answer the preceding paragraphs of this complaint as referred to and reaverred in paragraph 299 of Count IV in the same manner as each such paragraph has previously been answered.

107. Deny each and every averment in paragraph 300, except admit that Plaintiff purports to bring the action under Section 10(b) of the Securities Exchange Act of 1934 and Securities and Exchange Commission Rule 10 (b)-5, as well as common law fraud.

108. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 301.

109. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 302.

110. Deny each and every averment in paragraph 303.

111. Deny each and every averment in paragraph 304.

ANSWER TO COUNT V OF THE COMPLAINT

112. Answer the preceding paragraphs of this complaint as referred to and reaverred in paragraph 305 of Count V in the same manner as each such paragraph has previously been asnwered.

113. Deny each and every averment in paragraph 306, except admit that Plaintiff purports to bring the action under this count based upon common law and the doctrine of ancillary jurisdiction.

114. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 307.

115. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 308.

116. Deny knowledge or information sufficient to form a belief as to the truth of the averments in paragraph 309.

FIRST AFFIRMATIVE DEFENSE

117. The Complainant fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

118. Primary jurisdiction with respect to the averred causes of action asserted under Counts I through V of the complaint as it relates to Defendant National Clearing Corporation lies with the Securities and Exchange Commission by reason of the provisions of the Securities Exchange Act of 1934.

THIRD AFFIRMATIVE DEFENSE

119. The activities of Defendant National Clearing Corporation and Defendant National Association of Securities Dealers, Inc. were undertaken in order to fulfill the regulatory duties of the Defendant National Association of Securities Dealers, Inc. under the Securities Exchange Act of 1934 and were subject to the supervision of, and approval by, the Securities and Exchange Commission

A101

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN SAMUEL H. SLOAN & CO. Plaintiffs -against- SECURITIES & EXCHANGE COMMISSION, UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION NATIONAL QUOTATION BUREAU, INC. BUNKER RAMO CORP. NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. DISCLOSURE, INC. NATIONAL CLEARING CORPORATION Defendants	ANSWER Civil Action No. 74 Civ. 2792 (TPG)

ANSWER OF DEFENDANT
NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Defendant NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., through counsel, states as and for its Answer to the Complaint in this proceeding as follows:

1. Defendant denies each and every allegation contained in Paragraph One of the Complaint, except it admits that plaintiff purports to bring this action under those authorities specified therein.

2. Defendant denies each and every allegation of Paragraph Two of the Complaint.

3. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Three through Seven of the Complaint.

4. In answer to Paragraph Eight of the Complaint, Defendant admits that the Securities and Exchange Commission is an agency of the United States government, that there are five commissioners who sit as members of the Commission, and that said five commissioners are appointed by the

and therefore cannot serve as the basis for Plaintiff's anti-trust claim.

FOURTH AFFIRMATIVE DEFENSE

120. The court lacks jurisdiction over the subject matter of the action as it relates to Defendant National Clearing Corporation.

WHEREFORE, Defendant National Clearing Corporation demands judgement dismissing the complaint with costs and disbursements.

BREED, ABBOTT & MORGAN
55th Floor
One Chase Manhattan Plaza
New York, New York 10005

Attorneys for Defendant
National Clearing Corporation

Robert J. Woldow
National Clearing Corporation
1735 K Street, N.W.
Washington, D. C. 20006

Of Counsel

Date: December 10, 1974

President and confirmed by the Senate; Defendant further states that the people of the United States are sovereign.

5. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Nine of the Complaint.

6. In answer to Paragraph Ten Defendant denies each and every allegation of the first sentence of Paragraph Ten of the Complaint except it admits that Defendant Bunker Ramo Corp. is the owner of certain equipment which is utilized in the operation of the National Association of Securities Dealers Automated Quotation (NASDAQ) System, and that certain personnel employed by Defendant Bunker Ramo Corp. perform services in connection with the operation of the NASDAQ System. Further, Defendant admits that it is an Association of broker/dealers, and states that it is a national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. § 78o-3, and, further, Defendant admits that it owns all of the outstanding stock of National Clearing Corporation.

7. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Eleven of the Complaint.

8. Defendant admits the allegations contained in Paragraph Twelve of the Complaint except it states that Plaintiff Samuel H. Sloan in the past has been registered as a registered representative with a member of the Defendant Association.

9. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Thirteen through Twenty-Three of the Complaint.

10. In answer to Paragraph Twenty-Four of the Complaint, Defendant states that the NASDAQ System became operational in its original form in 1971.

11. Defendant admits the allegations contained in Paragraph Twenty-

Five of the Complaint.

12. Defendant denies each and every allegation contained in Paragraph Twenty-Six of the Complaint, except Defendant admits that the NASDAQ System is an electronic quotation system which, in the case of Level I Service, transmits quotations to distributors who in turn distribute quotations to broker/dealers and other subscribers, and, in the case of Level II and III Service, permits transmission of quotations entered by market makers to other market makers, broker/dealers, and other subscribers.

13. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Twenty-Seven of the Complaint.

14. Defendant denies each and every allegation contained in Paragraph Twenty-Eight of the Complaint, except that Defendant admits that registered market makers authorized to participate in the NASDAQ System are required to execute a trade for at least a normal unit of trading at its quotations as they appear in the NASDAQ System, and that Level III Service is available only to registered market makers. Further, Defendant admits that the registration of a market maker becomes effective at the start of business on the second business day following receipt of his application for registration, if such registration is accepted and a market maker's terminal timely installed. Further, Defendant admits that a registered market maker desiring to withdraw from the system temporarily may do so only with approval, or alternatively be required to re-register.

15. Defendant denies each and every allegation contained in Paragraphs Twenty-Nine through Thirty-One of the Complaint.

16. Defendant denies each and every allegation contained in Paragraph Thirty-Two of the Complaint, except that Defendant admits that registered market makers authorized to participate in the NASDAQ System and securities eligible to be authorized for inclusion in the System must meet specified standards. Further, Defendant admits that a depart-

ment of Defendant Association has access to terminals which can control all imput into the NASDAQ System, but Defendant denies such department is located at 77 Water Street, New York, New York.

17. Defendant admits the allegations contained in the first sentence of Paragraph Thirty-Three of the Complaint. Defendant admits the allegations contained in the second sentence of Paragraph Thirty-Three of the Complaint, except that Defendant denies that a representative bid and asked quotation is available for each security in the NASDAQ System. Defendant admits the allegations contained in the third sentence of Paragraph Thirty-Three of the Complaint, except that Defendant states that NASDAQ Level II Service is received on a NASDAQ terminal. Defendant admits the allegations contained in the fourth sentence of Paragraph Thirty-Three of the Complaint, except that Defendant states that NASDAQ Level III Service is received on a NASDAQ terminal which is not identical to that utilized for Level II Service.

18. Defendant denies each and every allegation contained in Paragraph Thirty-Four of the Complaint except it admits that Schedule D to Defendant Association's By-Laws provides that "Level III Service is available to any member which, upon application, is authorized ... to participate in the NASDAQ System as a registered market maker."

19. In answer to Paragraph Thirty-Five of the Complaint, Defendant admits that Article III, Section 25(a) of its Rules of Fair Practice contains the provisions as alleged in Paragraph Thirty-Five.

20. In answer to Paragraph Thirty-Six of the Complaint, Defendant states that no formal interpretation of the applicability of Article III, Section 25 of its Rules of Fair Practice to market making activity in the NASDAQ System has ever been rendered.

21. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Thirty-Seven through Forty of the Complaint.

22. Defendant admits that Paragraphs Forty-One and Forty-Two of the Complaint constitute a general summary of certain provisions of Defendant's Code of Arbitration Procedure.

23. Defendant denies each and every allegation contained in Paragraph Forty-Three of the Complaint.

24. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Forty-Four and Forty-Five of the Complaint.

25. Defendant denies each and every allegation contained in Paragraph Forty-Six of the Complaint.

26. In answer to Paragraph Forty-Seven of the Complaint, Defendant admits that all outstanding common stock of National Clearing Corporation is owned by Defendant; Defendant denies each and every remaining allegation contained in Paragraph Forty-Seven of the Complaint.

27. In answer to Paragraph Forty-Eight of the Complaint, Defendant admits that National Clearing Corporation provides a clearing function on a continuous net settlement basis.

28. Defendant denies each and every allegation contained in Paragraph Forty-Nine of the Complaint.

29. In answer to Paragraph Fifty of the Complaint, Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in the first sentence of Paragraph Fifty. Defendant denies each and every allegation contained in the second sentence of Paragraph Fifty of the Complaint.

30. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Fifty-One through Seventy of the Complaint.

31. Defendant denies each and every allegation contained in Paragraph Seventy-One of the Complaint, except Defendant admits that the staff of the Securities and Exchange Commission informs a regulatory department of the Defendant when a security is suspended from trading.

and that department in turn notifies a NASDAQ-related department.

32. Defendant denies each and every allagation contained in Paragraph Seventy-Two of the Complaint, except Defendant admits that Defendant causes quotations in a security subject to a trading suspension to be inaccessible in the NASDAQ System.

33. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Seventy-Three through Eighty and Eighty-Two through Eighty-Six of the Complaint, there being no paragraph designated Paragraph Eighty-One of the Complaint.

34. In answer to Paragraph Eighty-Seven of the Complaint, Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Eighty-Seven, except that Defendant admits that it has had an employee named James Yore but denies that such employee has ever been involved in the operation of the NASDAQ System, and, further, Defendant denies that it had at the time in question an employee named Jack Thompson.

35. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Eighty-Eight through One Hundred Seven of the Complaint.

36. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph One Hundred Eight of the Complaint.

37. Defendant denies each and every allegation contained in Paragraph One Hundred Nine of the Complaint and states that all expenses of the NASDAQ System are equitably allocated among subscribers in accordance with usage of the System and Schedule D of Defendant Association's By-Laws.

38. Defendant denies each and every allegation contained in Paragraph One Hundred Ten of the Complaint.

39. In answer to Paragraph One Hundred Eleven of the Complaint, De-

fendant states that certain rates charged to subscribers to the NASDAQ System at the time of its initiation were enumerated in Schedule D to Defendant Association's By-Laws and were governed by a document executed by Defendant Bunker Ramo Corporation and Defendant National Association of Securities Dealers, Inc.

40. Defendant denies each and every allegation contained in Paragraph One Hundred Twelve of the Complaint.

41. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs One Hundred Thirteen and One Hundred Fourteen of the Complaint.

42. Defendant denies each and every allegation contained in Paragraph One Hundred Fifteen of the Complaint.

43. In answer to Paragraph One Hundred Sixteen of the Complaint, Defendant repeats and reasserts the relevant portions of its answer to Paragraph Twenty-Eight of the Complaint, as set forth herein above.

44. In answer to Paragraph One Hundred Seventeen of the Complaint, Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in the first sentence of Paragraph One Hundred Seventeen. In answer to the second sentence of Paragraph One Hundred Seventeen, Defendant states that Defendant has no established policy on the subject matter alleged therein. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in the third sentence of Paragraph One Hundred Seventeen.

45. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs One Hundred Eighteen and One Hundred Nineteen of the Complaint.

46. Defendant denies each and every allegation contained in Paragraph One Hundred Twenty of the Complaint.

47. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs One Hundred Twenty-One through Two Hundred Twenty-Eight of the Complaint.

48. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Two Hundred Twenty-Nine of the Complaint, except it admits that Triex International Corporation has not been quoted in the NASDAQ System since the suspension in question.

49. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Two Hundred Thirty through Two Hundred Forty of the Complaint.

50. Defendant denies each and every allegation contained in Paragraph Two Hundred Forty-One of the Complaint.

51. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Two Hundred Forty-Two through Two Hundred Sixty-Three of the Complaint.

52. In answer to Paragraph Two Hundred Sixty-Four of the Complaint, Defendant repeats and reasserts the answers set forth herein above to Paragraphs One through Two Hundred Sixty-Three of the Complaint.

53. Defendant states that Paragraph Two Hundred Sixty-Five through Two Hundred Seventy-Four of the Complaint constitute assertions by the Plaintiff to which an answer by this Defendant is not required, except that to the extent such assertions may be found to constitute allegations against this Defendant, each and every such allegation is denied.

54. In answer to Paragraph Two Hundred Seventy-Five of the Complaint, Defendant repeats and reasserts the answers set forth herein above to Paragraphs One through Two Hundred Seventy-Four of the Complaint.

55. In answer to Paragraphs Two Hundred Seventy-Six and Two Hundred Seventy-Seven of the Complaint, Defendant states that such paragraphs constitute assertions by the Plaintiff to which an answer by this Defendant is not required except that to the extent such assertions

may be found to constitute allegations against the Defendant, each and every such allegation is denied.

56. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Two Hundred Seventy-Eight of the Complaint.

57. In answer to Paragraphs Two Hundred Seventy-Nine through Two Hundred Eighty-Eight of the Complaint, Defendant states that such paragraphs constitute assertions by the Plaintiff to which answers by this Defendant are not required except that to the extent such assertions may be found to constitute allegations against this Defendant, each and every such allegation is denied.

58. In answer to Paragraph Two Hundred Eighty-Nine of the Complaint, Defendant repeats and reasserts the answers set forth herein above to Paragraphs One through Two Hundred Eighty-Eight of the Complaint.

59. In answer to Paragraph Two Hundred Ninety of the Complaint, Defendant states that such paragraph contains an assertion of jurisdiction by the Plaintiff to which an answer by this Defendant is not required, except that to the extent that such assertion may be found to constitute allegations against this Defendant, each and every such allegation is denied.

60. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Two Hundred Ninety-One and Two Hundred Ninety-Two of the Complaint.

61. Defendant denies each and every allegation contained in Paragraphs Two Hundred Ninety-Three through Two Hundred Ninety-Eight of the Complaint.

62. In answer to Paragraph Two Hundred Ninety-Nine of the Complaint, Defendant repeats and reasserts the answers set forth herein above to Paragraphs One through Two Hundred Ninety-Eight of the Complaint.

63. In answer of Paragraph Three Hundred of the Complaint, Defendant states that such paragraph constitutes a statement of alleged jurisdiction by the plaintiff to which an answer by this Defendant is not required, except that to the extent such assertion may be found to constitute allegations against this Defendant, each and every such allegation is denied.

64. Defendant denies each and every allegation contained in Paragraph Three Hundred One of the Complaint.

65. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraphs Three Hundred Two and Three Hundred Three of the Complaint.

66. Defendant denies each and every allegation contained in Paragraph Three Hundred Four of the Complaint.

67. In answer to Paragraph Three Hundred Five of the Complaint, Defendant repeats and reasserts the answers as set forth herein above to Paragraphs One through Three Hundred Four of the Complaint.

68. Defendant states that Paragraph Three Hundred Six of the Complaint constitutes an assertion of jurisdiction by Plaintiff to which an answer is not required by this Defendant, except to the extent that such assertion may be found to constitute allegations against this Defendant, each and every such allegation is denied.

69. Defendant denies each and every allegation contained in Paragraphs Three Hundred Seven and Three Hundred Eight of the Complaint.

70. Defendant states that it is without knowledge sufficient to either admit or deny the allegations contained in Paragraph Three Hundred Nine of the Complaint.

First Affirmative Defense

The Complaint fails to state a cause of action upon which relief can be granted.

Second Affirmative Defense

The claims alleged in the Complaint are barred by the applicable statutes of limitations and by the doctrine of laches.

Third Affirmative Defense

The Court does not have jurisdiction of the subject matter in this proceeding.

Fourth Affirmative Defense

Defendant is exempted from application of the anti-trust laws by the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a et seq., generally, and by Section 15A(n) of that act, 15 U.S.C. § 780-3(n), specifically.

Fifth Affirmative Defense

Any action which may have been taken by Defendant in connection with any facts alleged in the Complaint was taken with the acquiescence, and under the active oversight, of the Securities and Exchange Commission pursuant to its responsibility as established by the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a et seq.

Sixth Affirmative Defense

Primary and exclusive jurisdiction to adjudicate the allegations made against Defendant Association in the Complaint rests with the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a et seq.

WHEREFORE, Defendant prays this Court:

1. To dismiss the Complaint filed herein and award costs to the Defendant, and

2. To grant such other relief as this Court may deem appropriate.

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
Defendant

Lloyd J. Derrickson

A112

Dennis C. Hensley
1735 K Street, N. W.
Washington, D.C. 20006

Of Counsel:

BREED, ABBOTT & MORGAN
50th Floor
One Chase Manhattan Plaza
New York, New York 10005

Dated: December 10, 1974

FILED
U.S. DISTRICT COURT
DEC 13 11 09 AM '74
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN SAMUEL H. SLOAN & CO., Plaintiffs, -against- SECURITIES AND EXCHANGE COMMISSION, UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION, NATIONAL QUOTATION BUREAU, INC., BUNKER RAMO CORP., NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., DISCLOSURE INC., and NATIONAL CLEARING CORP., Defendants.	ANSWER OF DISCLOSURE INC. 74 Civil 2792 (TPG)

Defendant Disclosure Inc., by its attorneys Willkie Farr & Gallagher, answers the amended complaint ("Complaint") as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 1 through 10 of the Complaint.

2. Admits the allegations contained in Paragraph 11 of the Complaint.

3. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 12 through 24 of the Complaint.

4. Admits upon information and belief the allegations of Paragraphs 25 and 26 of the Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 27 through 34 of the Complaint.

6. Denies each and every allegation contained in Paragraph 35 of the Complaint, and respectfully refers the Court to Article III, Section 25 of the Rules of Fair Practice of the NASD for the terms thereof.

7. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 36 through 40 of the Complaint.

8. Denies each and every allegation contained in Paragraphs 41 through 43 of the Complaint, and respectfully refers the Court to the provisions therein cited for the terms thereof.

9. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 44 through 49 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 50 and 51 of the Complaint, and respectfully refers the Court to the rules there referred to for the terms thereof.

11. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 52 through 80, 82 through 212 of the Complaint.

12. Denies each and every allegation contained in Paragraph 213 of the Complaint, except admits that certain of Disclosure Inc.'s copying services are provided at the rate of 15 cents per page, and that certain material may be obtained in the public reference rooms of the Securities and Exchange Commission at 10 cents per copy.

13. Denies each and every allegation contained in Paragraph 214 of the Complaint, except admits Disclosure Inc. has a contract with the Office of Records and Services of the Securities and Exchange Commission awarded October 27, 1972, and respectfully refers the Court to that contract as amended for the terms thereof.

14. Denies the allegations of Paragraph 215 of the Complaint.

15. Admits the allegations of Paragraph 216 of the Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 217 through 263 of the Complaint.

17. In answer to Paragraph 264 of the Complaint, Disclosure Inc. repeats and realleges each and every denial, admission and averment heretofore made in response to Paragraphs 1 through 263 of the Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 265 through 274 of the Complaint.

19. In answer to Paragraph 275 of the Complaint, Disclosure Inc. repeats and realleges each and every denial, admission and averment heretofore made in response to Paragraphs 1 through 274 of the Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 276 through 288 of the Complaint.

21. In answer to Paragraph 289 of the Complaint, Disclosure Inc. repeats and realleges each and every denial, admission and averment heretofore made in response to Paragraphs 1 through 288 of the Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 290 through 296 of the Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraph 297 of the Complaint, except denies insofar as they refer to Disclosure Inc.

24. Denies each and every allegation contained in Paragraph 298 of the Complaint.

25. In answer to Paragraph 299 of the Complaint, Disclosure Inc. repeats and realleges each and every denial, admission and averment heretofore made in response to Paragraphs 1 through 298 of the Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 300 through 304 of the Complaint.

27. In answer to Paragraph 305 of the Complaint, Disclosure Inc. repeats and realleges each and every denial, admission and averment heretofore made in response to Paragraphs 1 through 304 of the Complaint.

28. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs 306 through 309 of the Complaint.

FOR A FIRST COMPLETE AFFIRMATIVE DEFENSE
DISCLOSURE INC. ALLEGES:

29. The Complaint fails to state a claim upon which relief can be granted.

WHEREFORE, Disclosure Inc. requests judgment dismissing the Complaint awarding costs to it, and such other and further relief as to the Court seems just and proper.

Dated: New York, New York
December 10, 1974

WILLKIE FARR & GALLAGHER

By [signature]

Office and P.O. Address
One Chase Manhattan Plaza
New York, New York 10005
(212) 248-1000

Attorneys for Defendant
Disclosure Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN,

Plaintiff,

v.

SECURITIES AND EXCHANGE COMMISSION, et al.

Defendants.

74 Civil 2792 (TPG)

CERTIFICATE OF SERVICE

FILED
U.S. DISTRICT COURT
DEC 17 12 04 PM '74
S.D. OF N.Y.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

CAROL A. KILHENNY, being duly sworn, deposes and says:

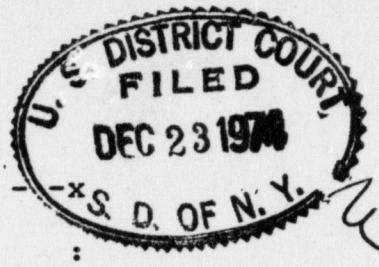
1. I am over 21 years of age and am employed by the U.S. Securities and Exchange Commission in its New York Regional Office as an attorney.

2. On December 11, 1974 I caused to be mailed a copy of the Answer to the following:

Samuel H. Sloan
120 Liberty St.
New York City, N.Y. 10006

Carol Anne Kilhenny
CAROL A. KILHENNY

Dated: New York, New York
December 11, 1974



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

SAMUEL H. SLOAN
SAMUEL H. SLOAN & CO.,

Plaintiffs,

-against-

SECURITIES AND EXCHANGE COMMISSION, UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION, NATIONAL QUOTATION BUREAU, INC., BUNKER RAMO CORP., NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., DISCLOSURE INC., and NATIONAL CLEARING CORP.,

Defendants.

- -x

74 Civil 2792
(TPG)

ANSWER

The Defendant National Quotation Bureau, Inc. (the "Defendant"), by its attorneys, Rogers & Wells, answers the averments contained in the Plaintiffs' Amended Complaint of October 21, 1974 (the "Complaint"), as follows:

1. Defendant denies each and every averment contained in Paragraph 1 of the Complaint, except that Defendant admits that this action purports to be brought pursuant to the Securities Exchange Act of 1934, Section 4 of the Sherman Act, Section 4 of the Clayton Act, the law of the State of New York and common law.

2. Defendant denies each and every averment contained in Paragraph 2 of the Complaint.

3. Upon information and belief Defendant admits the averments contained in Paragraph 3 of the Complaint.

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of averments contained

in Paragraphs 4, 5, 6 and 7 of the Complaint.

5. Defendant denies each and every averment contained in Paragraph 8 of the Complaint, except Defendant admits that the Securities and Exchange Commission is an agency created by federal statute and Defendant refers to the terms of the statute creating the Securities and Exchange Commission for the particulars of its creation and existence.

6. Defendant admits the averments contained in Paragraph 9 of the Complaint.

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 10, 11 and 12 of the Complaint.

8. Defendant admits the averments contained in Paragraph 13 of the Complaint.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 14 of the Complaint.

10. Defendant admits the averments contained in Paragraphs 15, 16 and 17 of the Complaint.

11. Defendant admits the averments contained in Paragraph 18 of the Complaint.

12. Defendant denies each and every averment contained in Paragraphs 19 and 20 of the Complaint.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 21, 22 or 23 of the Complaint, except Defendant admits that the Defendant does discourage broker-dealers from submitting listings in its publications when those listings are not intended to advise other broker-dealers of the possible existence of a market; and Defendant

admits that plaintiff Samuel H. Sloan & Co. has caused its name to be listed in various publications of the Defendant.

14. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50 of the Complaint.

15. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 51 of the Complaint, except Defendant admits that the Securities and Exchange Commission has promulgated Rule 15c 2-11.

16. Defendant admits the averments contained in Paragraph 52 of the Complaint.

17. Defendant denies each and every averment contained in Paragraph 53 of the Complaint, except Defendant admits that it developed Form 211 as an aid to its subscribing broker-dealers and that in attempting to provide this service for its subscribing broker-dealers the Defendant did consult with the Securities and Exchange Commission.

18. Defendant denies each and every averment contained in Paragraph 54 of the Complaint.

19. Defendant admits the averments contained in Paragraph 55 of the Complaint.

20. Defendant denies each and every averment contained in Paragraph 56 of the Complaint, except Defendant admits that copies of completed Forms 211 which are received by Defendant are forwarded to the Securities and Exchange Commission.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments

contained in Paragraphs 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93 and 94 of the Complaint, except Defendant admits that the Securities and Exchange Commission has suspended trading at various times in the securities of Continental Vending Machine Corp. and Albro Industries, Inc. and refers to the public records of the actions of the Securities and Exchange Commission for the specific dates and reasons therefor. There is no Paragraph 81 in the Complaint.

22. Defendant denies each and every averment contained in Paragraphs 95, 96, 97, 98 and 99 of the Complaint, except Defendant admits that plaintiff Samuel H. Sloan & Co. did apply for admission to Defendant's services in December 1971; that the Defendant required Samuel H. Sloan & Co. to be listed as Samuel H. Sloan & Co. because that was how plaintiff was listed in the directory of registered broker-dealers of the Securities and Exchange Commission.

23. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122 and 123 of the Complaint.

24. Defendant denies each and every averment contained in Paragraphs 124, 125, 126, 127, 128 and 129 of the Complaint, except Defendant admits that from time to time plaintiff was in arrears with respect to the payment of its subscription bills and that it is the policy of the Defendant to transmit dated invoices setting forth the amount in arrears and required to be paid; and further, it is the policy of the

Defendant not to contact a subscriber unless its bill is 90 days or more overdue or unless the Defendant has reason to believe that a subscriber is about to go out of business.

25. Defendant lacks knowledge or information sufficient t form a belief with respect to the truth of the averments contained in Paragraph 130 of the Complaint.

26. Defendant admits the averments contained in Paragraph 131 of the Complaint.

27. Defendant denies each and every averment contained in Paragraphs 132, 133, 134 and 135 of the Complaint, except Defendant admits that at one time the plaintiff owed Defendant approximately $1,755.87, but that in or about the first week of December 1974 plaintiff paid the aforesaid $1,755.87; and further, that at or about that same time the plaintiff paid for his subscriptions through July 1, 1975 in the amount of $436.32.

28. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 136, 137, 138, 139, 140, 141, 142, 143 and 144 of the Complaint.

29. Defendant admits the averments contained in Paragraph 145 of the Complaint.

30. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 146 of the Complaint.

31. Defendant admits the averments contained in Paragraph 147 of the Complaint.

32. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments

contained in Paragraphs 148, 149, 150, 151, 152 and 153 of the Complaint.

33. Defendant admits the averments contained in Paragraph 154 of the Complaint.

34. Defendant denies each and every averment contained in Paragraphs 155 and 156 of the Complaint.

35. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 157, 158, 159, 160, 161, 162, 163, 164, 165, 166 and 167 of the Complaint, except Defendant admits that the Securities and Exchange Commission has from time to time suspended trading in the securities of Pelorex Corp. and Rolls Royce Ltd. ADR's and refers to the public records of the Securities and Exchange Commission for the specific dates and reasons therefor.

36. Defendant admits the averments contained in Paragraph 168 of the Complaint.

37. Defendant lacks knowledge or information sufficient to form a belief as to the averments contained in Paragraphs 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189 and 190 of the Complaint, except Defendant admits that on various occasions the Securities and Exchange Commission has suspended trading in Canadian Javelin Ltd. and refers to the public records of the Securities and Exchange Commission for the specific dates and reasons therefor.

38. Defendant admits the averments contained in Paragraph 191 of the Complaint.

39. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments

contained in Paragraphs 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204 and 205 of the Complaint, except Defendant admits that the Securities and Exchange Commission has suspended trading in the securities of Hemisphere Hotels Corp., International Hydrolines Inc., Sheffield Watch Corp. and Stirling Homex Corp. and refers to the public records of the Securities and Exchange Commission for the specific dates and reasons therefor.

40. Defendant admits the averments contained in Paragraphs 206 and 207 of the Complaint.

41. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 208 and 209 of the Complaint.

42. Defendant admits the averments contained in Paragraph 210 of the Complaint.

43. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230 and 231 of the Complaint, except Defendant admits that on at least one occasion prior to the date hereof the Securities and Exchange Commission suspended trading in the common stock of Triex International Corp. and refers to the public files of the Securities and Exchange Commission for the specific date and reasons therefor.

44. Defendant admits the averments contained in Paragraphs 232, 235 and 236 of the Complaint.

45. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 233, 234 and 237 of the Complaint.

46. Defendant denies each and every averment

contained in Paragraph 238 of the Complaint, except Defendant admits that Sloan was told that he would not be permitted to list quotations for any securities in Defendant's services unless and until it was a subscriber to those services.

47. Defendant lacks knowledge or information sufficient to form a belief as to the averments contained in Paragraphs 239 and 240 of the Complaint, except Defendant refers to the contents of Paragraph 27 of this answer, in which Defendant points out that the plaintiff has paid in full for its subscription to the Defendant's services through July 1, 1975; Defendant admits that plaintiff submitted a Form 211 to Defendant for the stock of Triex International Corp. on December 16, 1974.

48. Defendant denies each and every averment contained in Paragraph 241 of the Complaint.

49. Defendant lacks knowledge or information sufficient to form a belief as to the averments contained in Paragraphs 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262 and 263 of the Complaint.

50. With respect to Paragraph 264 of the Complaint, Defendant repeats and realleges the denials and averments of Paragraphs 1 to 49 hereof with the same force and effect as if fully set forth.

51. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 265, 266,267, 268, 269, 270, 271, 272, 273 and 274 of the Complaint.

52. With respect to Paragraph 275 of the Complaint, Defendant repeats and realleges the denials and averments

of Paragraphs 1 to 51 hereof with the same force and effect as if fully set forth.

53. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraphs 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287 and 288 of the Complaint.

54. With respect to Paragraph 289 of the Complaint, Defendant repeats and realleges the denials and averments of Paragraphs 1 to 53 hereof with the same force and effect as if fully set forth.

55. Defendant denies each and every averment contained in Paragraphs 290, 291 and 292 of the Complaint.

56. Defendant lacks knowledge or information sufficient to form a belief as to the averments contained in Paragraphs 293, 294, 295 and 296 of the Complaint.

57. Defendant denies each and every averment contained in Paragraphs 297 and 298 of the Complaint.

58. With respect to Paragraph 299 of the Complaint, Defendant repeats and realleges the denials and averments of Paragraphs 1 to 57 hereof with the same force and effect as if fully set forth.

59. Defendant denies each and every averment contained in Paragraphs 300, 302 and 304 of the Complaint.

60. Defendant lacks knowledge or information sufficient to form a belief as to the averments contained in Paragraphs 301 and 303 of the Complaint.

61. With respect to Paragraph 305 of the Complaint, Defendant repeats and realleges the denials and averments of Paragraphs 1 to 60 hereof with the same force and effect as if fully set forth.

62. Defendant lacks knowledge or information sufficient to form a belief as to the averments contained in Paragraphs 306, 307 and 308 of the Complaint.

63. Defendant denies each and every averment contained in Paragraph 309 of the Complaint.

AS AND FOR A FIRST COMPLETE AFFIRMATIVE DEFENSE:

64. The Complaint fails to state any claim upon which relief may be granted by this Court.

AS AND FOR A SECOND COMPLETE AFFIRMATIVE DEFENSE:

65. This Court lacks jurisdiction to render any declaratory judgment with respect to plaintiffs' allegations of amounts due and owing to Defendant in that the plaintiffs owe no sums to Defendant for subscriptions to the Defendant's services.

WHEREFORE, National Quotation Bureau, Inc. demands judgment of this Court dismissing the Amended Complaint and awarding costs to it and such other and further relief as to this Court may seem just and proper.

Dated: December 20, 1974

ROGERS & WELLS

By H Allen Tuchman
A Member of the Firm
Attorneys for Defendant
National Quotation Bureau, Inc.
200 Park Avenue
New York, New York 10017

Tel.: (212) 972-7000

(1K)

U.S. DISTRICT COURT
FILED
JAN 14 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiffs,

-against-

SECURITIES AND EXCHANGE COMMISSION,
UNITED STATES OF AMERICA as the
SECURITIES AND EXCHANGE COMMISSION,
NATIONAL QUOTATION BUREAU, INC.,
NATIONAL ASSOCIATION OF SECURITIES DEALERS,
INC.,
BUNKER RAMO CORP., DISCLOSURE, INC.
NATIONAL CLEARING CORP.,

Defendants.
- X

74 Civil 2792

TPG

TEMPORARY RESTRAINING ORDER
and
ORDER TO SHOW CAUSE
FOR PRELIMINARY INJUNCTION

On the motion of the plaintiff, Samuel H. Sloan, and upon the annexed affidavit of Samuel H. Sloan sworn to the 10th day of January, 1975 and upon the summons and complaint in this action and upon all the papers and proceedings had herein and it appearing that defendant National Quotation Bureau, Inc., unless restrained will continue to refuse to permit the plaintiff to list his name in the pink sheets published by the National Quotation Bureau, Inc. and it appearing that a cause of action exists against the National Quotation Bureau, Inc. for violations of the Clayton Act and the Sherman Act and that, unless restrained, the National Quotation Bureau, Inc. will cause immediate and irreparable injury, loss and damage to the plaintiff herein, it is hereby

ORDERED that defendant National Quotation Bureau, Inc. show cause before the Hon. Thomas P. Griesa on January 31, 1975 at 4:30 P.M. in Room 129 of the United States Courthouse, Foley Square, New York, N.Y. or as soon thereafter

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as the matter may be heard why a preliminary injunction pursuant to Rule 65 F. R. Civ. P. should not be granted as requested by the plaintiff,

AND IT IS FURTHER ORDERED that pending determination of this motion for a preliminary injunction that the National Quotation Bureau, Inc. be and hereby is:

(a) Restrained and enjoined from refusing to list the name of the plaintiff herein under any securities in the pink and yellow sheets published by the National Quotation Bureau, Inc.

(b) Ordered to list the name of the plaintiff under any and all securities in which the plaintiff may desire to be listed.

AND IT IS FURTHER ORDERED that personal service by Samuel H. Sloan of the within order shall be effected on Rogers & Wells, counsel for the National Quotation Bureau, Inc. by 5:00 P.M. on January 10, 1975.

Thomas P. Griesa
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
January 10, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiffs,

-against-

SECURITIES AND EXCHANGE COMMISSION,
UNITED STATES OF AMERICA as the
SECURITIES AND EXCHANGE COMMISSION,
NATIONAL QUOTATION BUREAU, INC.,
NATIONAL ASSOCIATION OF SECURITIES DEALERS,
INC., BUNKER RAMO CORP., DISCLOSURE, INC.,
NATIONAL CLEARING CORP.,

Defendants.
- X

74 Civil 2792

TPG

AFFIDAVIT IN SUPPORT
OF PLAINTIFFS' MOTION
FOR A TEMPORARY RESTRAINING
ORDER AND A PRELIMINARY
INJUNCTION

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

SAMUEL H. SLOAN, being duly sworn, deposes and says:

1. I make this affidavit in support of a motion for a temporary restraining order and a preliminary injunction against defendant National Quotation Bureau, Inc. ("NQB").

2. In early December, 1974, I paid a check to the NQB in the amount of $1,755.87 and a subsequent check in the amount of $436.32 . As a result of these payments I became a paid up subscriber to the pink sheets until July 1, 1975.

3. During the week from December 17, 1974 ot December 23, 1974, I submitted, according to my count, 373 Forms 211 to the NQB. These Forms 211 are essentially listing applications for securities not regularly listed in the pink sheets.

4. I understand that approximately 50 of these applications were un-

necessary because the securities in question were already in the pink sheets. A few others had mistakenly been submitted unsigned by me, and a few more were the subject of a name change. With those exceptions all 373 Forms 211 were accepted by the NQB and the securities in question were duly published in the pink sheets except for approximately 17 securities which the NQB apparently refused to list because these securities were currently subject to a suspension of trading by the S.E.C.

5. On December 30, 1974, the S.E.C. commenced an injunctive proceeding entitled S.E.C. v. Sloan et ano, 74 Civil 5729 (RJW) and obtained a temporary restraining order against me on that date. On January 8, 1975 this order was extended by Judge Griesa, the Part I Judge, until January 17, 1975.

6. It appears that on December 31, 1974, the S.E.C. served a copy of the temporary restraining order on the NQB and directed the NQB by telephone not to list my name under any securities. In any event, the present situation is that the NQB will not take my listings while the TRO is in effect even though I am a paid subscriber to the NQB.

7. According to Judge Ward's order, I am restrained from initiating over-the-counter quotations. The fact is that I have no intention or present desire to list quotations in the pink sheets. I am quite satisfied to list my name only in the pink sheets. Specifically, Rule 15c2-11, the rule on which the S.E.C. bases this part of its injunctive action, only prohibits the publication of actual quotations. There is nothing in the rule to prohibit a broker from listing a particular security "in name only" or without a bid or on asked quotation regardless of how much or how little information is publically available. For this reason, the listings which I desire to insert in the

pink sheets could not possibly violate Rule 15c2-11.

8. The reason that all of this was necessary was because of a rule which the NQB imposes on all of its subscribers which is that the initial listing of any security must contain a bid or an asked quotation. The reason the NQB does this is to obtain prices which it can publish in its semi-annual National Stock Summary which it sells to banks and brokers. Once an initial quotation has been listed in the pink sheets, the NQB can and does permit its subscribers to continue to make listings on an "in name only" basis indefinitely.

9. It is clear that the NQB is operating in violation of the Sherman and Clayton Acts because it has no competition and there is no other place where I can list low priced over-the-counter securities. If this order is not granted, I will suffer irreparable injury because I will be effectively prohibited from buying and selling the securities which I desire to list. The NQB, on the other hand, will suffer no injury and will, in fact, be fulfilling its obligation to me as a subscriber.

10. No prior application has been made for the relief requested herein.

WHEREFORE, the undersigned respectfully prays that this court grant a temporary restraining order and a preliminary injunction enjoining the NQB from refusing to list the name of the plaintiff in the pink sheets under any security.

Samuel H. Sloan
SAMUEL H. SLOAN

Sworn to before me this
10th day of January, 1975

Roberta E. Fishbein

ROBERTA E. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. [illegible]
QUALIFIED IN [illegible] COUNTY
COMMISSION EXPIRES [illegible] 1976

ROBERTA E. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4518042
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976

U.S. DIST... FIL...
JAN 31 ...
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN SAMUEL H. SLOAN & CO. Plaintiffs -against- SECURITIES & EXCHANGE COMMISSION UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION NATIONAL QUOTATION BUREAU, INC. BUNKER RAMO CORPORATION NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. DISCLOSURE, INC. NATIONAL CLEARING CORPORATION Defendants	74 Civil 2792 (TPG) AFFIDAVIT

DISTRICT OF COLUMBIA) ss.:

JOHN H. HODGES, JR., being duly sworn, says:

1. I am a Senior Vice-President of Defendant National Association of Securities Dealers, Inc., and make this affidavit in support of the motions of Defendants National Association of Securities Dealers, Inc., Bunker Ramo Corporation and National Clearing Corporation pursuant to Rule 12 of the Federal Rules of Civil Procedure and Rule 9 of the Federal Local District Court Rules, to dismiss the Complaint herein with respect to all three Defendants on the grounds that the Court lacks jurisdiction over the subject matter of the Complaint and that Plaintiffs have failed to state a claim upon which relief can be granted.

2. I have been an employee of Defendant National Association of Securities Dealers, Inc. during the entire period of time within which the Plaintiffs' allegations fall. By reason of my personal knowledge, I am fully familiar with the facts stated herein.

3. During the implementation of the National Association of Securities Dealers, Inc.'s automated quotation system, owned by

Defendant Bunker Ramo Corporation and operated in accordance with the rules of Defendant National Association of Securities Dealers, Inc. and as part of the Defendant National Association of Securities Dealers, Inc. continuing policy to make public the means by which the Defendant National Association of Securities Dealer, Inc. provides services in the automated quotations area, the attached pamphlets were widely distributed to National Association of Securities Dealers, Inc. member firms, and other interested parties.

4. The attached pamphlets are true and exact copies of the pamphlets disseminated to the public as stated above.

5. The attached pamphlets describe how the National Association of Securities Dealers' automated quotation system operates and plans for future enhancements to it.

John H. Hodges, Jr.

Sworn to before me this 29th day of January, 1975.

Margaret B. Caley
Notary Public

My Commission Expires: April 14, 1979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN SAMUEL H. SLOAN & CO. Plaintiffs -against- SECURITIES & EXCHANGE COMMISSION UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION NATIONAL QUOTATION BUREAU, INC. BUNKER RAMO CORPORATION NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. DISCLOSURE, INC. NATIONAL CLEARING CORPORATION Defendants	74 Civil 2792 (TPG) Notice of Motion To Dismiss and Motion for Judgment on the Pleadings.

HEMU ENDORSE
JAN 31 1975
S. D. OF N. Y.

PLEASE TAKE NOTICE

THAT, upon the annexed affidavit of Robert J. Woldow sworn to on the 30th day of January, 1975, the annexed affidavit of Gordon S. Macklin sworn to on the 30th day of January, 1975 and the annexed affidavit of John H. Hodges, Jr. sworn to on the 29th day of January, 1975, and the exhibits attached hereto, the Summons, the Amended Complaint and the Answers and upon the prior proceedings had herein the undersigned Defendants, National Association of Securities Dealers, Inc., National Clearing Corporation and Bunker Ramo Corporation, will move at the United States District Court for the Southern District of New York in Foley Square, New York, New York before the Honorable Judge Thomas P. Griesa in Room 129 on February 14, 1975 at 4:30 p.m., or as soon thereafter as Counsel can be heard, for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and Rule 9 of the Federal Local Court Rules for the Southern District of New York dismissing the Complaint herein, or in the alternative for an order pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and Rule 9 of the Federal Local Court Rules for the Southern District of New York rendering judgment on the pleadings for the Defendants named herein on the grounds

that this Court lacks jurisdiction over the subject matter and for such other relief as to the Court may seem just and proper.

January 31, 1975
Washington, D. C.

Respectfully submitted,

Lloyd J. Derrickson
Senior Vice President &
General Counsel
National Association of Securities
Dealers, Inc.
1735 K Street, N.W.
Washington, D. C. 20006
202-833-7370

Robert J. Woldow
Vice President & General Counsel
National Clearing Corporation
1735 K Street, N.W.
Washington, D. C. 20006
202-833-7150

Attorneys for Defendants
National Association of Securities
Dealers, Inc.
National Clearing Corporation
Bunker Ramo Corporation

Of Counsel:

Breed, Abbott & Morgan
1 Chase Manhattan Plaza
New York, New York 10005

TO: Samuel H. Sloan
Plaintiff pro se
120 Liberty Street
New York, New York 10006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
JAN 31 1975
S.D. OF N.Y.

SAMUEL H. SLOAN,

Plaintiff,

v.

SECURITIES AND EXCHANGE COMMISSION, et al.,

Defendants.

Docket No. 74 Civil 2792 (TPG)

MOTION TO DISMISS OR FOR SUMMARY JUDGMENT

For reasons set forth in the attached memorandum of law, the defendant Securities and Exchange Commission respectfully moves the Court for dismissal of this action against it for lack of jurisdiction and for failure to state a claim upon which relief can be granted pursuant to Rule 12(b) of the Federal Rules of Civil Procedure or in the alternative for summary judgment.

Respectfully submitted,

PAUL GONSON
Associate General Counsel

Thomas L. Daugherty III
Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN SAMUEL H. SLOAN & CO. Plaintiffs -against- SECURITIES & EXCHANGE COMMISSION UNITED STATES OF AMERICA as the SECURITIES AND EXCHANGE COMMISSION NATIONAL QUOTATION BUREAU, INC. BUNKER RAMO CORPORATION NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. DISCLOSURE, INC. NATIONAL CLEARING CORPORATION Defendants	74 Civil 2792 (TPG) AFFIDAVIT

COMMONWEALTH OF VIRGINIA) ss.:

ROBERT J. WOLDOW, being duly sworn, says:

1. I am an attorney at law duly licensed to practice in the District of Columbia and before the United States Court of Appeals for the District of Columbia Circuit and Vice President and General Counsel of National Clearing Corporation, a Delaware Corporation registered to do business in, among others, New York State. I am an attorney of record representing Defendant National Clearing Corporation. I am familiar with the facts of this case and with all pleadings herein.

2. On October 30, 1974 as counsel for National Clearing Corporation, I personally received in New York City an Amended Summons and Amended Complaint dated October 22, 1974 in the matter of Samuel H. Sloan, Samuel H. Sloan & Co. v. Securities and Exchange Commission, et al., 74 Civil Action File No. 2792.

3. On December 10, 1974, after an extension of time was granted, National Association of Securities Dealers, Inc., National Clearing Corporation and Bunker Ramo Corporation filed answers in the above captioned case.

4. At a pre-trial conference, in Judge's Chambers, the Honorable Thomas P. Griesa, a Judge of the United States District Court for the Southern District of New York directed that dispositive motions by all Defendants named in the Complaint be served on Plaintiffs on January 31, 1975, with the response by Plaintiffs to be served by February 7, 1975. Judge Griesa ordered a hearing on the motions to be held on February 14, 1975 at 4:30 p.m. in Room 129, Federal District Court House, Foley Square, New York, New York.

5. Lloyd J. Derrickson, Esq., Counsel of record for Defendants National Association of Securities Dealers Inc., and Bunker Ramo Corporation, has agreed to the joining with National Clearing Croporation in a Motion to Dismiss and a Motion for Judgment on the Pleadings.

6. On January 31, 1975, Defendants National Clearing Corporation, National Association of Securities Dealers, Inc. and Bunker Ramo Corporation will file with the Court and serve upon the Plaintiffs Notice of Motion to Dismiss and Motion for Judgment on the Pleadings in the above captioned case.

7. As more fully discussed in the Statement of Facts appearing in the Memorandum in support of the motion to be filed concurrently, Plaintiffs have alleged various anti-trust and fraud claims in addition to numerous frivolous, disjointed and conclusionary allegations against National Association of Securities Dealers, Inc., National Clearing Corporation and Bunker Ramo Corporation stemming in main from alleged prohibitions imposed on Plaintiffs as to membership in Defendants National Association of Securities Dealers, Inc.'s automated quotation system (operated by Bunker Ramo) and the National Association of Securities Dealers, Inc.'s clearance system (National Clearing Corporation).

8. Defendants National Association of Securities Dealers,

Inc., National Clearing Corporation and Bunker Ramo Corporation motions assert that the Complaint fails to state a claim upon which relief can be granted and that this Court lacks jurisdiction over the subject matter of the Complaint.

It is further asserted by Defendants National Association of Securities Dealers, Inc., National Clearing Corporation and Bunker Ramo Corporation in the Memorandum noted above that the Securities Exchange Act of 1934, as amended, provides immunity from the anti-trust laws and confers primary and exclusive jurisdiction upon the Securities and Exchange Commission for claims asserting violations of the Maloney Act.

9. The affidavit of Gordon S. Macklin, President of Defendant National Association of Securities Dealers, Inc. and Chairman of the Board of Defendant National Clearing Corporation states that the rules and By-Laws of the National Association of Securities Dealers, Inc. relating to the National Association of Securities Dealers, Inc.'s automated quotation system have been filed with the Securities and Exchange Commission and subsequently non-disapproved by the Commission. Mr. Macklin's affidavit further states that the rules and By-Laws of Defendant National Clearing Corporation have also been filed and non-disapproved by the Commission. Copies of the rules and By-Laws and the non-disapproval letters from the Commission are attached thereto.

10. The affidavit of John H. Hodges, Jr., Senior Vice President of Defendant National Association of Securities Dealers, Inc. states that information concerning the National Association of Securities Dealers, Inc.'s automated quotation system has been publicly distributed and provides copies of two such distributions.

11. Wherefore Defendants National Association of Securities Dealers, Inc., National Clearing Corporation and Bunker Ramo

Corporation, respectfully request that the Motion to Dismiss or in the alternative, the Motion for Judgment on the Pleadings be granted.

Robert J. Woldow

Sworn to before me this 31st day of January, 1975

Barbara Lee Snowden
Notary Public

My Commission Expires: 27 June 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
FILED
JAN 31 1975
S. D. OF N. Y.

SAMUEL H. SLOAN,

Plaintiff,

v.

SECURITIES AND EXCHANGE COMMISSION, et al.,

Defendants.

74 Civil 2792(TPG)

NOTICE OF MOTION

PLEASE TAKE NOTICE that on Friday, February 14, 1975 at 4:00 p.m. or as soon thereafter as counsel may be heard before the Honorable Thomas P. Griesa, United States District Judge, United States Courthouse, Foley Square, New York, New York, the defendant Securities and Exchange Commission will move this Court for dismissal of this action or in the alternative for summary judgment.

THOMAS L. TAYLOR III
Attorney

Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549
Telephone: (202) 755-1297

Dated: January 31, 1975

U.S. DISTRICT COURT
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN SAMUEL H. SLOAN & CO. Plaintiffs -against- SECURITIES & EXCHANGE COMMISSION UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION NATIONAL QUOTATION BUREAU, INC. BUNKER RAMO CORPORATION NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. DISCLOSURE, INC. NATIONAL CLEARING CORPORATION Defendants	:	74 Civil 2792 (TPG) AFFIDAVIT

COMMONWEALTH OF VIRGINIA)ss.:

GORDON S. MACKLIN, being duly sworn, says:

1. I am President of Defendant National Association of Securities Dealers, Inc. and Chairman of the Board of Defendant National Clearing Corporation, and make this affidavit in support of the motions of Defendants National Association of Securities Dealers, Inc., Bunker Ramo Corporation and National Clearing Corporation pursuant to Rule 12 of the Federal Rules of Civil Procedure and Rule 9 of the Federal Local District Court Rules, to dismiss the Complaint herein with respect to all three Defendants on the grounds that this Court lacks jurisdiction over the subject matter of the Complaint and that Plaintiffs have failed to state a claim upon which relief can be granted.

2. As President of Defendant National Association of Securities Dealers, Inc. and Chairman of the Board of Defendant National Clearing Corporation and by reason of my personal knowledge, I am fully familiar with the facts stated herein.

3. The rules and By-Laws of Defendant National Association of Securities Dealers, Inc. relating the National Association of

Securities Dealers, Inc.'s automated quotation system (NASDAQ) and the rules and By-Laws of Defendant National Clearing Corporation have been filed with, and subsequently non-disapproved by the Securities and Exchange Commission pursuant to Section 15A(j) of the Securities Exchange Act of 1934, as amended, as evidenced herein by the attached true and exact copies of the letters of non-disapproval by the Securities and Exchange Commission.

5. The attached rules and By-Laws of Defendant National Association of Securities Dealers, Inc. relating to the National Association of Securities Dealers, Inc.'s automated quotation system and the rules and By-Laws of Defendant National Clearing Corporation are true and exact copies of such rules and By-Laws filed with and subsequently non-disapproved by the Securities and Exchange Commission as stated above.

Gordon S. Macklin

Sworn to before me this 31st day of January, 1975.

Barbara Lee Snowden
Notary Public

My Commission Expires: 27 June 1976

MEMO ENDORSED

U.S. DISTRICT COURT
FILED
FEB 3 - 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN SAMUEL H. SLOAN & CO. Plaintiffs, -against- SECURITIES & EXCHANGE COMMISSION UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION NATIONAL QUOTATION BUREAU, INC. BUNKER RAMO CORP. NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC. DISCLOSURE, INC. NATIONAL CLEARING CORP. Defendants.	74 Civil Action 2792 (TPG) NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that defendant National Quotation Bureau, Inc. will move this Court for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure or Rule 56 of the rules pursuant to the provisions of Rule 12(c) on Friday, February 14, 1975, at 4:30 o'clock P.M. in Room 129 of the United States Courthouse, Foley Square, New York, New York, or as soon thereafter as counsel an be heard.

Dated: January 31, 1975.

Yours, etc.,

ROGERS & WELLS
Attorneys for Defendant
National Quotation Bureau, Inc.
200 Park Avenue
New York, New York 10017

TO:

Samuel H. Sloan
Samuel H. Sloan & Co.
120 Liberty Street
New York, New York 10006
Plaintiff

Jerome Selvers, Esq.
Securities and Exchange Commission
26 Federal Plaza
New York, New York 10007
Counsel for Defendant
Securities and Exchange Commission

Paul Curran, Esq.
United States Attorney for the
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007
Counsel for the United States of America as
the Securities and Exchange Commission

Breed, Abbott & Morgan
One Chase Manhattan Plaza
New York, New York 10005
Counsel for Defendants National
Association of Securities Dealers, Inc.,
Bunker Ramo Corp. and National Clearing
Corp.

Willkie, Farr & Gallagher
One Chase Manhattan Plaza
New York, New York 10005
Countsel for Defendant Disclosure, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN, et al., Plaintiffs, -against- SECURITIES & EXCHANGE COMMISSION, et al., Defendants.	74 Civil 2792 (TPG) AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID BURNETT, being duly sworn, deposes and says:

1. I am Executive Vice President of National Quotation Bureau, Inc. ("NQB"). NQB is the publisher of the National Daily Quotation Service (the "Pink Sheets"), which is a daily listing of bid and asked quotations and indications of interest of brokers who trade in securities Over-the-Counter. NQB is a defendant in the above-captioned action and I make this affidavit in support of NQB's Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure or, in the alternative, Rule 56 of those rules pursuant to the provisions of Rule 12(c).

2. In the amended complaint filed against NQB by plaintiffs Samuel H. Sloan and Samuel H. Sloan & Co. (the "plaintiffs") they allege (paragraph 9) that there is no other service or organization in competition with NQB. This is not the case. Since 1971 the National Association of Securities Dealers has provided electronic automated Over-the-Counter quotations to broker-dealers through its National Association of Securities Dealers Automated

Quotations Service ("NASDAQ").

3. In deciding this motion the Court should be advised of the following facts regarding the plaintiffs' activities as subscribers to the Pink Sheets. For a period prior to April 1973 plaintiff Sloan was a subscriber to the Pink Sheets and as a subscriber was billed in April 1973 for his subscription. From April through August 15, 1973 Sloan continued to submit quotations for listing in the Pink Sheets but made no payment of his subscription bill. On August 15, 1973 Sloan's name was listed with quotations in the Pink Sheets for approximately 70 different securities. On August 16, 1973 Sloan's subscription to the Pink Sheets was cancelled for nonpayment of bills and the quotations which he thereafter submitted for publication in the Pink Sheets were rejected. On November 15, 1974 Sloan paid his unpaid bill in the amount of $1,755.87. He subsequently made application as a subscriber to the Pink Sheets and paid $436.32 for subscriptions through July 1, 1975. NQB began listing Sloan's quotations in the Pink Sheets on December 9, 1974, as soon as his application had been processed.

4. A subscription by a broker-dealer to the Pink Sheets costs $60 per month and brokers are usually billed semi-annually in advance. The basic subscription entitles the broker-dealer to one set of Pink Sheets on each day that they are published and ten daily listings in those sheets. Each additional group of five listings costs $25 more per month. When a broker submits additional listings interim bills are rendered. In the event that the broker reduces the number

of additional listings during any month pro rated credits or refunds are made respecting those reductions.

5. At no time has NQB ever required its subscribers to deal exclusively with it in supplying or receiving Over-the-Counter securities quotations. Indeed, to the best of my knowledge, many brokers subscribe to the Pink Sheets and also use the services of NASDAQ and some brokers use NASDAQ exclusively.

6. I am advised that no prior application has been made to this Court for the relief requested by NQB.

David Burnett

Sworn to before me this

31 day of January, 1975

John M. Walsh

JOHN M. WALSH
Notary Public, State of New York
No. 41-4501037
Qualified in Queens County
Commission Expires March 30, 1975

U.S. DISTRICT COURT
FILED
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S. D. OF N. Y.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN, et al., Plaintiffs,	74 Civil Action 2792
-against-	(TPG)
SECURITIES & EXCHANGE COMMISSION, et al., Defendants.	

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID BURNETT, being duly sworn, deposes and says:

1. I am Executive Vice President of National Quotation Bureau, Inc. ("NQB"). NQB is the publisher of the National Daily Quotation Service (the "Pink Sheets"), which is a daily listing of bid and asked quotations and indications of interest of brokers who trade in securities Over-the-Counter. NQB is a defendant in the above-captioned action and I make this affidavit in opposition to plaintiff's motion for preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure ("FRCP").

2. NQB has no regulatory function and merely publishes quotations submitted by its subscribing broker-dealers. Pursuant to the provisions of Rule 15c-2-11, which was promulgated by the Securities and Exchange Commission ("SEC") pursuant to Section 15(c) of the Securities Exchange Act of 1934 ("the Exchange Act"), brokers are held fully liable for quotations which they publish in any "quotation medium" as defined by Rule 15c-2-11.

3. On or about August 16, 1973 NQB cancelled plaintiff's subscription to the Pink Sheets because plaintiff had refused to pay an outstanding bill of some $1,755.87. On November 15 plaintiff Sloan paid his unpaid bill in the amount of $1,755.87. He subsequently made application as a subscriber to the Pink Sheets and paid $436.32 for subscriptions through July 1, 1975. NQB began listing Sloan's quotations in the Pink Sheets on December 9, 1974, as soon as his application had been processed.

4. NQB continued to publish Sloan's quotations until on or about December 30, 1974, when it ceased doing so because it was served with a temporary restraining order issued by Judge Ward, a judge of this Court. That order was issued pursuant to an injunctive proceeding brought by the SEC (SEC v. Sloan, 74 Civil 5729 (RJW)). The SEC sought to enjoin plaintiff from violations of the record keeping and net capital rules of the federal securities laws and sought to enjoin plaintiff from violating Rule 15c-2-11 promulgated pursuant to Section 15(c)(2) of the Exchange Act. A copy of the SEC's injunctive papers and Judge Ward's order is annexed hereto as Exhibit A. Included in Exhibit A is the full text of Rule 15c-2-11, which, as will be seen, requires a broker-dealer to possess certain information about an issuer before that broker-dealer submits quotations to a "quotation medium" (as defined in the rule).

5. On or about December 31 and thereafter until on or about January 15, 1975 NQB did not publish any of plaintiff's listings because none was submitted until January 13, 1975. NQB was also aware that plaintiff left the United States from on or about December 30, 1974 through January 6 or 7, 1975. Furthermore, NQB was concerned by

plaintiff's stated intention to the SEC that he would not abide by the requirements of Rule 15-c-2-11.

6. It is clear by the action of plaintiff in seeking this preliminary relief that he is attempting to subvert the order of Judge Ward, who granted the SEC preliminary relief pursuant to their action on or about January 17, 1975. Since January 15, 1975 NQB has been listing plaintiff's name under various securities, including Anheuser-Busch, American Express and Anglo-American Gold. Accordingly, plaintiff's request for preliminary relief must be denied by this Court since the issues raised by him are moot.

7. Plaintiff is also seeking to undermine the operational rules of NQB by compelling NQB to violate its own rule about initial quotations which appear in the Pink Sheets. That is to say, NQB's internal rule is that the first quotation on a security which has not been actively listed for a period of time must have a price. This internal rule should not be voided by this Court to suit the convenience of plaintiff and his attempts to avoid the regulations of the SEC and an order of another Judge of this Court.

David Burnett

Sworn to before me this
31st day of January, 1975

Notary Public

JOHN M. WALSH
Notary Public, State of New York
No. 41-4501037
Qualified in Queens County

A155

12/31/75 Copy Rec'd by Sec'y of Com. Chief N.C.B. acc. [illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Civil Action File No. 6729 (RJW) ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

On the motion of the Plaintiff, Securities and Exchange Commission ("Commission"), and upon the Complaint in this action and the Affidavits of Thomas F. Dolan and Ira B. Spindler annexed hereto, and it appearing that the defendants Samuel H. Sloan ("Sloan"), individually and doing business as Samuel H. Sloan & Co. ("Sloan & Co."), pending final determination of the action, will, unless restrained, continue to engage in acts and practices which constitute violations of Sections 15(c)(2) and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, 15 U.S.C. 78q(a) and Rules 15c2-11 and 17a-4 promulgated thereunder, 17 C.F.R. 240.15c2-11 and 240.17a-4 and that immediate and irreparable injury, loss and damage will result to members of the investing public and others, it is hereby

ORDERED, that the defendants Sloan and Sloan & Co. show cause, if any there be, before Judge Robert J. Ward on ~~December~~ Jan 8, 1975 at 2:15 pm in Room 519 of the United States Courthouse, Foley Square, New York, New York, or as soon thereafter

as the matter can be heard, why a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure should not be granted as requested by the plaintiff Commission.

AND IT IS FURTHER ORDERED that pending determination of this motion for a preliminary injunction, Sloan and Sloan & Co., their agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them (or any member or dealer registered with the Commission of which defendant Sloan may become a principal or controlling person), be and they hereby are:

(a) Ordered to permit immediate examination in an easily accessible place by examiners and other representatives of the Commission of the books and records of Sloan and Sloan & Co. (or any other broker or dealer registered with the Commission of which Sloan may become a principal or controlling person) as required by Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-4;

(b) Restrained from further violations of the examination provisions of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-4; and

(c) Ordered not to remove, destroy or alter the books and records of Sloan and Sloan & Co. required to be made,

maintained and preserved pursuant to Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17a-3 and 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-3 and 17a-4.

AND IT IS FURTHER ORDERED that pending determination of this motion for a preliminary injunction, Sloan and Sloan & Co., their agents, servants, employees, attorneys, successors and assigns, and those persons in active concert or participation with them (or any member or dealer registered with the Commission of which defendant Sloan may become a principal or controlling person) be and they are hereby restrained from further violations of the provisions for initiating over-the-counter quotations of Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2) and Rule 15c2-11 promulgated thereunder, 17 C.F.R. 240.15c2-11, (a full copy of the Rule is attached hereto and made a part of this temporary restraining order), while and at a time said defendants failed to possess, maintain, preserve or make reasonably available upon request to any person expressing an interest in a proposed transaction in the security being quoted, and/or member of the plaintiff Commission's staff those items of information required to be in the possession of a broker-dealer before a broker-dealer may lawfully publish any such quotation as required by Rule CFR 240.15c2-11(a)(4) and (c).

IT IS FURTHER ORDERED that personal service of the within Order shall be effected upon the defendants Sloan and Sloan & Co. by 6:30 pm December 30, 1974.

Service of this Order, Summons, Complaint and Supporting Affidavits may be made by representatives of plaintiff Commission.

/S/
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
December 30, 1974
at 5:55 p.m

...er located in a different city or ...hic area.
... 48 Stat. 895, as amended; 15 U.S.C. ... 3 F.R. 11530, Aug. 12, 1964]

...5c2-8 Delivery of prospectus.

...t shall constitute a deceptive ... ...tice, as those terms are used ... ...5(c)(2) of the Act, for a ... ...er to participate in a distribution ... ...ities with respect to which a ... ...n statement has been filed under ... ...urities Act of 1933 unless he com... ...th the requirements set forth in ... ...ons (b) through (g) of this ... ...r the purposes of this section, a ... ...r dealer participating in the dis... ...n shall mean any underwriter ... member or proposed member of ... ...g group.

...ch broker or dealer shall take ...ble steps to furnish to any per... ...makes written request for a pro... ...prospectus between the filing ... a reasonable time prior to the ... date of the registration state... which such prospectus relates, ... the latest preliminary prospectus ...ith the Commission. Reasonable ...all include receiving an under... ...the managing underwriter ... ...ters to mail such copy to the ...ven in the requests.

...ch broker or dealer shall take ... steps to comply promptly ... written request of any person ...y of the final prospectus relating ...ch securities during the period ... the effective date of the regis...tement and the later of either ...ination of such distribution, or ...tion of the applicable 40- or ...eriod under section 4(3) of the ... Act of 1933. Reasonable steps ...ude receiving an undertaking ...anaging underwriter or under... ... mail such copy to the address ...he requests. (The 40-day period ... above shall be deemed to ap... ...poses of this rule irrespective ...ovisions of paragraph (b) of ... of this chapter.)

...n broker or dealer shall take ...e steps (1) to make available ... the preliminary prospectus re... such securities to each of his ... persons who is expected, prior ...ective date, to solicit customers' ... such securities before the ... any such solicitation by such ... persons and (2) to make ...o each such associated person ... copy of any amended preliminary prospectus promptly after the filing thereof.

(e) Such broker or dealer shall take reasonable steps to make available a copy of the final prospectus relating to such securities to each of his associated persons who is expected, after the effective date, to solicit customers orders for such securities prior to the making of any such solicitation by such associated persons, unless a preliminary prospectus which is substantially the same as the final prospectus except for matters relating to the price of the stocks, has been so made available.

(f) If the broker or dealer is a managing underwriter of such distribution, he shall take reasonable steps to see to it that all other brokers or dealers participating in such distribution are promptly furnished with sufficient copies, as requested by them, of each preliminary prospectus, each amended preliminary prospectus and the final prospectus to enable them to comply with paragraphs (b), (c), (d), and (e) of this section.

(g) If the broker or dealer is a managing underwriter of such distribution, he shall take reasonable steps to see that any broker or dealer participating in the distribution or trading in the registered security is furnished reasonable quantities of the final prospectus relating to such securities, as requested by him, in order to enable him to comply with the prospectus delivery requirements of section 5(b) (1) and (2) of the Securities Act of 1933.

(h) This section shall not require the furnishing of prospectuses in any state where such furnishing would be unlawful under the laws of such state: *Provided, however,* That this provision is not to be construed to relieve a broker or dealer from complying with the requirements of section 5(b) (1) and (2) of the Securities Act of 1933.

(15 U.S.C. 78o(c)(2)) [35 F.R. 19457, Dec. 4, 1970]

§ 240.15c2-11 Initiation or resumption of quotations without specific information.

(a) It shall be a fraudulent, manipulative, and deceptive practice within the meaning of section 15(c)(2) of the Act, for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in this section) unless:

(1) The issuer has filed a registration statement under the Securities Act of 1933 which became effective ... than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium: *Provided,* That such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of the prospectus specified by section 10(a) of the Securities Act of 1933; or

(2) The issuer has filed a notification under Regulation A under the Securities Act of 1933 which became effective less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium: *Provided,* That the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of such offering circular; or

(3) (i) The issuer is required to file reports pursuant to section 13 or 15(d) of the Act, or is the issuer of a security covered by section 12(g)(2) (B) or (G) of the Act, and

(ii) The broker or dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed at regular intervals pursuant to section 13 or 15(d) of the Act, or, in the case of insurance companies exempted from section 12(g) of the Act by section 12(g)(2)(G) thereof, the annual statement referred to in section 12(g)(2)(G)(i) of the Act; and

(iii) The broker or dealer has in his records the issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act, or the annual statement in the case of an insurance company not subject to section 12(g) of the Act, together with any other reports required to be filed at regular intervals under such provisions of the Act which have been filed by the issuer after such annual report or annual statement; or

(4) Such broker or dealer has in his records, and shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer, the following information (which shall be reasonably current in relation to the day the quotation is submitted), which

he has no reasonable basis for believing is not true and correct or reasonably current, and which was obtained by him from sources which he has a reasonable basis for believing are reliable: (i) The exact name of the issuer and its predecessor (if any); (ii) the address of its principal executive offices; (iii) the state of incorporation, if it is a corporation; (iv) the exact title and class of the security; (v) the par or stated value of the security; (vi) the number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year; (vii) the name and address of the transfer agent; (viii) the nature of the issuer's business; (ix) the nature of products or services offered; (x) the nature and extent of the issuer's facilities; (xi) the name of the chief executive officer and members of the board of directors; (xii) the issuer's most recent balance sheet and profit and loss and retained earnings statements; (xiii) similar financial information for such part of the 2 preceding fiscal years as the issuer or its predecessor has been in existence; (xiv) whether the broker or dealer or any associated person is affiliated, directly or indirectly with the issuer; (xv) whether the quotation is being published or submitted on behalf of any other broker or dealer, and, if so, the name of such broker or dealer; and (xvi) whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person. If such information is made available to others upon request pursuant to this subparagraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is true and correct, but shall constitute a representation by such broker or dealer that the information is reasonably current in relation to the day the quotation is submitted, that he has no reasonable basis for believing the information is not true and correct, and that the information was obtained from sources which he has a reasonable basis for believing are reliable.

(b) With respect to any security the quotation of which is within the provisions of this section, the broker or dealer submitting or publishing such quotation shall maintain in his records information regarding all circumstances involved in the submission or publication of such quotation, including the identity of the person or persons for whom the quotation is being submitted or published and any information regarding the transaction provided to the broker or dealer by such person or persons.

(c) The broker or dealer shall maintain in writing as part of his records the information described in paragraphs (a) and (b) of this section, and any other information (including adverse information) regarding the issuer which comes to his knowledge or possession before the publication of submission of the quotation, and preserve such records for the periods specified in § 240.17a-4.

(d) For any security of an issuer excluded in paragraph (a)(4) of this section, the broker or dealer submitting the quotation shall furnish to the interdealer quotation system (as defined in paragraph (e)(1) of this section), in such form as such system shall prescribe, at least 2 days before the quotation is published or submitted, the information regarding the security and the issuer which such broker or dealer is required to maintain pursuant to said paragraph (a)(4) of this section.

(e) For purposes of this section:

(1) "Quotation medium" shall mean any "interdealer quotation system" or any publication or electronic communications network or other device which is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(2) "Interdealer quotation system" shall mean any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.

(3) Except as otherwise specified in this section, "quotation" shall mean a bid or offer at a specified price with respect to a security.

(f) The provisions of this section shall not apply to:

(1) The publication or submission of a quotation respecting a security admitted to trading on a national securities exchange and which is traded on such exchange on the same day as, or on the

With respect to any security th-
-n of which is within the provi-
this section, the broker or deal-
-ing or publishing such quotati-
maintain in his records inform-
-garding all circumstances r-
-n the submission or publica-
quotation, including the ident-
person or persons for whom t-
-on is being submitted or pub-
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quotation medium" shall mean
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on the same day as, or on the

business day next preceding, the day the quotation is published or submitted.

(2) The publication or submission of a quotation for securities of foreign issuers exempt from section 12(g) of the Act by reason of compliance with the provisions of § 240.12g3-2(b).

(3) The publication or submission of a quotation respecting a security which has been the subject of both bid and ask quotations in an inter-dealer quotation system at specified prices on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without such a two-way quotation.

(g) The requirement in paragraph (a)(4) of this section that the information with respect to the issuer be "reasonably current" will be presumed to be satisfied, unless the broker or dealer has information to the contrary, if:

(1) The balance sheet is as of a date less than 16 months before the publication or submission of the quotation, the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet, and if such balance sheet is not as of a date less than 6 months before the publication or submission of the quotation, it shall be accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than 6 months before the publication or submission of the quotation.

(2) Other information regarding the issuer specified in paragraph (a)(4) of this section is as of a date within 12 months prior to the publication or submission of the quotation.

(h) This section shall not prohibit any publication or submission of any quotation if the Commission, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of this section.

[36 F.R. 18641, Sept. 18, 1971]

§ 240.15c3-1 Net capital requirements for brokers and dealers.

(a) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 2,000 per centum of his net capital, and every broker or dealer shall have the net capital necessary to comply with the following conditions:

(1) If he becomes registered as a broker or dealer on and after August 13, 1971, his aggregate indebtedness to all other persons on and after August 30, 1972, and for 12 months after becoming registered shall not exceed 800 per centum of his net capital, and except as provided for in subparagraphs (3) and (4) of this paragraph, he shall have and maintain net capital of not less than $25,000; and

(2) If he became registered as a broker or dealer before August 13, 1971, and he does not come within the provisions of subparagraph (3) or (4) of this paragraph, he shall have and maintain net capital of not less than $15,000 commencing July 31, 1973, and $25,000 commencing July 31, 1974;

(3) Notwithstanding the provisions of subparagraphs (1) and (2) of this paragraph, if he promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers he shall have and maintain net capital of not less than $5,000 if he does not otherwise carry accounts of or for customers; and

(4) The minimum net capital to be maintained by a broker or dealer meeting all of the following conditions shall be $2,500:

(i) His dealer transactions (as principal for his own account) are limited to the purchase, sale and redemption of redeemable shares of registered investment companies; except that a broker or dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account with or through another registered broker-dealer;

(ii) His transactions as broker (agent) are limited to: (a) The sale and redemption of redeemable securities of registered investment companies; (b) the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and (c) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(iii) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, - against - SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Civil Action File No. AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

THOMAS F. DOLAN, being duly sworn, deposes and says:

1. I am employed by the United States Securities and Exchange Commission ("Commission"), plaintiff in the above entitled action, in its New York Regional Office as a Securities Compliance Examiner.

2. I make this affidavit in support of the application of the Commission for an Order to Show Cause, Temporary Restraining Order and Motion for Preliminary Injunction against Samuel H. Sloan ("Sloan"), individually and doing business as Samuel H. Sloan & Co., ("Sloan & Co.").

3. This affidavit is based upon correspondence and other documents of defendant Sloan & Co., statements made to or in my presence by Sloan, information received from the NQB, information contained in the official files of the Commission and upon

information and belief.

4. Defendant Sloan & Co., a sole proprietorship, has its principal place of business at 120 Liberty Street, New York, N.Y.; however, maintains its books and records at 1761 Eastburn Avenue in the Bronx, N.Y. Defendant Sloan & Co. is registered with the Commission pursuant to the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b), as a broker and dealer in securities and has been so registered since May 10, 1970.

5. Defendant Sloan resides at 1761 Eastburn Avenue, Bronx, New York, and at all times relevant hereto, is and has been sole proprietor and manager of defendant Sloan & Co.

6. Sloan was advised both by letter and telephone that members of the staff would examine his books and records on Thursday, December 26, 1974.

VIOLATIONS OF SECTION 17(a) OF THE EXCHANGE ACT, 15 U.S.C. 78q(a) AND RULE 17a-4 THEREUNDER, 17 CFR 240. 17a-4 (EXAMINATION AND VISITATION PROVISIONS)

7. On December 26, 1974 I was instructed to make a examination of the books and records of defendant Sloan & Co. at 1761 Eastburn Avenue, Bronx, N.Y. I was accompanied by Mr. Ira Spindler ("Spindler"). However, after informing Sloan that we were to examine his books and records, Sloan refused to produce the same. I advised Sloan that he was required to maintain his books and records in an easily accessible place as well as re-

quired to make them available for examination by members of the staff of the Commission. Moreover, I personally gave Sloan a copy of Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4 promulgated thereunder. However, Sloan remained adamant in his refusal to allow us to examine his books and records.

8. Sloan informed us that his books and records were easily accessible to him but not to the Commission.

9. I asked Sloan if he was aware of the fact that he was personally enjoined by an Order of this Court for future violations of Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-4 promulgated thereunder. He replied that he was aware of the injunction but felt that his conduct was not violative of the same.

10. I asked Sloan if it was his intention to refuse examination of his books and records both at 120 Liberty Street and at Lynchburg, Virginia. He advised me that no books and records were maintained at 120 Liberty Street but that he would not allow an examination of his books and records in Lynchburg, Virginia.

NEED FOR RELIEF

11. Defendant Sloan & Co., is in violation of the bookkeeping provisions of the Exchange Act. By virtue of the fact that Sloan has refused to allow an examination of his books and records, it is impossible to determine whether the firm was in compliance with various other provisions of the federal securities laws,

12. For the reasons stated above, a clear and specific showing has been made as required by Rule 9(c)(4) of the General Rules of this Court that it is necessary for the Commission to proceed by Order to Show Cause rather than by Notice of Motion, to seek a Temporary Restraining Order and Preliminary Injunction restraining and enjoining the defendants from further violations of the Exchange Act as alleged in the Complaint filed herein.

13. No previous request of this relief has been made to this Court or any Judge thereof, based on the facts complained of herein.

Thomas F. Dolan

THOMAS F. DOLAN

Sworn to before me this
30th day of December, 1974

NOTARY PUBLIC

[illegible]
Notary Public, State of New York
No. 7057670
Qualified in Kings County
Commission Expires March 30, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, - against - SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO. Defendants.	74 Civil Action File No. AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

IRA B. SPINDLER, being duly sworn, deposes and says:

1. I am employed by the United States Securities and Exchange Commission ("Commission"), plaintiff in the above entitled action, in its New York Regional Office as a Financial Analyst, in the Branch of Market Surveillance. Part of my duties include reviewing the listing applications submitted to the National Quotations Bureau ("NQB"), to determine compliance with Rule 15c-2-11.

2. I make this affidavit in support of the application of the Commission for an Order to Show Cause, Temporary Restraining Order and Motion for Preliminary Injunction against Samuel H. Sloan ("Sloan"), individually and doing business as Samuel H. Sloan & Co., ("Sloan & Co.").

3. This affidavit is based upon correspondence and other documents of defendant Sloan & Co., statements made to or in my presence by Sloan, information received from the NQB, information contained in the official files of the Commission and upon

information and belief.

4. Defendant Sloan & Co., a sole proprietorship, has its principal place of business at 120 Liberty Street, New York, New York; however, maintains its books and records at 1761 Eastburn Avenue in the Bronx, New York. Defendant Sloan & Co. is registered with the Commission pursuant to the provisions of Section 15(b) of the Exchange Act, 15 U.S.C. 78o(b), as a broker and dealer in securities and has been so registered since May 10, 1970.

5. Defendant Sloan resides at 1761 Eastburn Avenue, Bronx, New York, and at all times relevant hereto, is and has been sole proprietor and manager of defendant Sloan & Co.

6. Sloan was advised both by letter and telephone that members of the staff would examine his books and records on Thursday, December 26, 1974.

VIOLATIONS OF SECTION 15(c)(2) OF THE EXCHANGE ACT, 15 U.S.C. 78o(c)(2) AND RULE 15c2-11 THEREUNDER, 17 C.F.R. 240.15c2-11 -(PROVISION FOR INITIATING OVER-THE-COUNTER QUOTATIONS)

7. On December 18, 1974, the NQB, publishers of the Pink Sheets, forwarded to this office applications submitted by Sloan to quote the shares of Franklin New York Corp. ("Franklin") and Triex International Corp. ("Triex"). Each of these issues had been suspended from trading in the over-the-counter market by the Commission. Franklin was suspended for the period May 13, 1974 through October 31, 1974 and Triex for the period December 15, 1972 through December 19, 1973. There apparently is no cur-

rent financial information available for either.

8. Sloan did not provide any financial information with these applications, and, as a result, any quotation published for these issues would not be in compliance with Rule 15c2-11. I telephoned Sloan at approximately 10:30 a.m. on December 18, 1974 and informed him of the above.

9. Sloan stated that it was his intention to willfully violate Rule 15c2-11 with regard to these quotations and that it was his further intention to publish quotations for at least 93 other issues for which current information was not available.

10. As of December 26, 1974, this office had in its possession 293 Forms 211s submitted by Sloan. In addition, I have been advised that additional forms are en-route from the NQB. Moreover during the week of December 23, 1974, approximately 176 quotations on the bid side have been published in the Pink Sheets, and that 107 quotations are scheduled for publication on December 30, 1974, 20 are scheduled for December 31, 1974 and 3 are scheduled for January 3, 1975.

11. Although the forms are submitted, they do not contain much of the information which was intended to be provided to protect public investors. For example, Part 2 requires that the broker indicate which exemption from Rule 15c2-11 the broker relies on in submitting his quotation. In all instances, Sloan has indicated "None Of The Above", yet fails to supply the specified information in Part 3. In fact, Sloan's answers

contained in Part 3 are either "Don't Know", "Don't Have", or "No." */

12. Although the Rule requires that a broker or dealer keep, with respect to any quotation, which is within the provisions of the Rule, records required of all the circumstances surrounding the quotation, Sloan refused to make his books and records available and is in further violation of the Rule.

13. On Thursday, December 26, 1974 I was instructed to examine Sloan's due diligence files pertaining to the quotation submitted on Form 211 to the NQB. However, when I arrived at 1761 Eastburn Avenue with Thomas F. Dolan, Broker-Dealer Compliance Examiner, Sloan failed to produce his books and records.

14. I have read the affidavit of Thomas F. Dolan and I am in accord with the contents therein.

NEED FOR RELIEF

15. Defendant Sloan & Co. and Sloan are and have been in violation of the requirements for initiating over-the-counter quotations of the Exchange Act and Rule promulgated thereunder. Sloan's submission for publication of quotations, for securities

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*/ Attached hereto is a copy, which will serve as a sample of all the listing applications Sloan has filed.

for which he does not possess reasonable information under Rule 15c2-11, places the public in jeopardy. Unless defendant Sloan & Co. and Sloan are enjoined, members of the public may become victims of an unscrupulous scheme.

16. No previous request of this relief has been made to this Court or any Judge thereof.

IRA B. SPINDLER

Sworn to before me this
30th day of December, 1974

NOTARY PUBLIC

DOUGLAS P. JACOBS
Notary Public, State of New York
No. 7057670
Qualified in Kings County
Commission Expires March 30, 1976

74 Civil
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN & CO.

Defendants.

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER AND AFFIDAVITS

WILLIAM D. MORAN
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No.: (212) 264-1636

A171

U.S. DISTRICT COURT
FILED
FEB 5 - 1975
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,

Plaintiff,

-against-

SECURITIES AND EXCHANGE COMMISSION, et al.,

Defendants.
- X

74 Civil 2792

NOTICE OF CROSS MOTION
TPG

PLEASE TAKE NOTICE, that upon the annexed affidavit of Samuel H. Sloan, sworn to the 4th day of February, 1975 and all the papers and proceedings had herein, the undersigned will cross move this Court on February 14, 1975 at 4:00 P.M. (1) for a preliminary and permanent injunction enjoining the Securities and Exchange Commission from instituting and prosecuting actions for injunctive relief, from promulgating and enforcing rules and regulations, from conducting investigations, and from undertaking any acts or practices under color of the Securities Exchange Act of 1934 or the rules or regulations promulgated thereunder or under color of any other acts, statutes or rules from which the Securities and Exchange Commission claims to derive its authority, on the grounds that the Securities and Exchange Commission is an independent regulatory body not answerable to any part of the Executive, Legislative or Judicial branches of the United States Government and that, for this and other reasons, the existance of the Securities and Exchange Commission is repugnant to the constitution (2) for summary judgment or judgment on the pleadings as to the Securities and Exchange Commission pursuant to Rule 56 F.R. Civ. P. on the grounds that there is no triable issue

of fact before this court, all the allegations in the complaint having been deemed admitted and (3) for the convening of a three judge constitutional court pursuant to 28 U.S.C. 2282 and 28 U.S.C. 2284 to decide both this motion and the ultimate disposition of this action on the grounds that the questions of fact and law raised in this action must, by statute and by Article 3, Section 2, paragraph 3 of the Constitution of the United States, be decided by a three judge court.

Yours, etc.
Samuel H. Sloan

Samuel H. Sloan
Plaintiff, pro se
114 Liberty Street
New York, N.Y. 10006
(212) 583-8565

TO: Thomas L. Taylor
Securities & Exchange Commission
500 N. Capitol Street
Washington, D.C. 20549

Naomi Reese Buchwald
Counsel for United States of America
Foley Square
New York, N.Y. 10007

Rogers & Wells
Counsel for defendant National Quotation Bureau, Inc.
200 Park Avenue
New York, N.Y. 10017

Breed, Abbott & Morgan
Counsel for various defendants
One Chase Manhattan Plaza
New York, N.Y. 10005

Dennis Hensley
Counsel for National Association of Security Dealers
1735 K Street, N.W.
Washington, D.C. 20006

Wilkie, Farr & Gallagher
Counsel For Disclosure, Inc.
One Chase Manhattan Plaza
New York, N.Y. 10005

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,

Plaintiff,

-against-

SECURITIES AND EXCHANGE COMMISSION, et al.,

Defendants.
- X

74 Civil 2792
AFFIDAVIT IN SUPPORT OF MOTIONS OF PLAINTIFF AND IN OPPOSITION TO MOTIONS OF THE S.E.C.

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

SAMUEL H. SLOAN, being duly sworn deposes and says:

1. I make this affidavit in support of a motion to put the S.E.C. out of Commission and for various other relief. I believe that the complaint, as filed, is, and should be, complete in and of itself. Therefore I will not increase the burden of this court by attempting to add any new facts by way of affidavit at this time. At the same time, should my motion for summary judgment be denied, I am not waiving the right to litigate all of the issues in dispute in the pleadings. At this point I believe that the only document before this Court is the complaint. By moving for summary judgment without supporting affidavits, the S.E.C. has expressly admitted each and every fact alleged in the complaint even though the S.E.C. denied certain allegations of the complaint in its answer. I believe that my cross motion for summary judgment is almost superfluous because the S.E.C. has already moved for summary judgment and a motion for summary judgment, by its nature, can go either way.

2. There are certain additional facts which the court can and should

find in order to grant my motion for a preliminary and permanent injunction against the Securities and Exchange Commission ("S.E.C."). I will try to state these facts as briefly as possible:

(A) The S.E.C was created as a result of the enactment of the Securities Act of 1933.

(B) The S.E.C. is an independent regulatory agency which is not part of the Executive, Legislative or Judicial branches of the United States Government as defined by Articles 1, 2 and 3 of the United States Constitution.

(C) The S.E.C. contends that it is charged with administering the Securities Act of 1933, the Securities Exchange Act of 1934, (15 U.S.C. 78a), the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisors Act of 1940 and, to a certain extent, the Securities Investor Protection Act of 1970.

(D) The S.E.C. is and has been engaged in an active policy promulgating new rules and regulations under the Securities Exchange Act of 1934 and other acts from which it claims to derive its authority.

(E) The S.E.C. contends that these rules and regulations have the effect of law and that a violation of these rules and regulations are unlawful. To this extent, the S.E.C. is exercising legislative powers.

(F) The S.E.C. is and has been engaged in an active policy of commencing "administrative proceedings" which are quasi criminal public proceedings brought most frequently against registered broker-dealers and issuers of publicly traded securities. These proceedings are brought to

exact penalties from broker-dealers and others who have violated the rules and regulations promulgated by the S.E.C.

(G) The plaintiff herein has been the target of one of these administrative proceedings which has been pending since April, 1972 and is still yet to be resolved. In an initial decision of March, 1973, Administrative Law Judge Ralph Hunter Tracy found in favor of the S.E.C.

(H) Ralph Hunter Tracy was and is an employee of the S.E.C. and, during his entire career as an administrative law judge, has, in each and every administrative proceeding heard by him, found in favor of the S.E.C. In other words, Ralph Hunter Tracy has never found in favor of the respondent in any administrative proceeding heard by him.

(I) Ralph Hunter Tracy is a career employee of the S.E.C.who was promoted to the job of administrative law judge after many years of service as a member of the S.E.C. staff.

(J) The S.E.C. also conducts non-public (i.e. secret) proceedings against attorneys and accountants. The deponent herein is neither an attorney or an accountant and has never been the target of one of these proceedings and, by virtue of its secret nature, knows little of these proceedings. However, deponent does know that an attorney or an accountant can be barred from "practice before the Commission" as the result of these proceedings. Furthermore, it appears to deponent, from facts alleged in paragraphs 245-263 in the complaint, that his former accountant and later attorney, Robert W. Taylor, has been the target of one of these proceedings.

(K) Administrative proceedings of the type referred to above are quasi judicial proceedings. Actually, the S.E.C. contends that they <u>are</u>

judicial proceedings and are a substitute for the judicial branch of the United States Government as defined by Article 3 of the United States Constitution.

(L) The S.E.C. is engaged in an active policy of enforcement of its rules and regulations. In this end, the S.E.C. has a "Division of Enforcement," a "Division of Market Surveillance", and a "Division of Legal Interpretation."

(M) The Division of Enforcement conducts investigations and commences administrative and judicial proceedings against alleged securities law violators (such as the deponent). Usually, targets of S.E.C. investigations are initially asked to appear and to give sworn testimony before the S.E.C. staff. In addition, targets of S.E.C. investigations are frequently asked to produce books and records and other documents and are subjected to frequent visits from members of the S.E.C. staff.

(N) In the case of a broker-dealer, once an S.E.C. investigatory file is opened it usually cannot be closed except in one of two ways. Either the broker-dealer agrees voluntarily to cease doing business or the S.E.C. completes an administrative or judicial proceeding with respect to that broker-dealer.

(O) The Division of Market Surveillance regulates securities trading and is concerned with, among other things, S.E.C. suspensions and enforcement of Rule 15c2-11. It was this division that deponent ran afoul of when the S.E.C. commenced its most recent judicial proceeding against him (74 Civil 5729, U.S.D.C, S.D.N.Y.).

(P) The Division of Legal Interpretation issues "no-action letters," "Securities Act releases," "Exchange Act releases," and other releases and gives legal interpretations of S.E.C. rules and regulations over the telephone. In some cases, where published, these interpretations are deemed to modify rules already in effect without the rule itself being revised. An example of this phenomena is referred to in paragraph 227-8 of the complaint.

(Q) The Division of Enforcement has powers which, under the Constitution, are supposed to be awarded to the Executive Branch of the U.S. Government. The Division of Enforcement is roughly the equivalent of the office of the U.S. Attorney in the government proper. The Division of Legal Interpretation has some "executive" and some "legislative" functions. The Division of Market Surveillance has no equivalent anywhere in the normal functioning of the U.S. Government.

(R) At one time or another, deponent has had dealings with all of these divisions of the S.E.C. Furthermore, the S.E.C. has exercised legislative, executive and judicial powers with respect to deponent. For example, the S.E.C. promulgated Rule 15c-1 (The net capital rule) and Rule 17(a)-4 (the bookkeeping rule) thereby exercising a legislative function. Then, in early 1971, the S.E.C. commenced an investigation of deponent for alleged violations of Rule 15c-1 and Rule 17a-4 and subsequently commenced a judicial proceeding and an administrative proceeding with respect to deponent thereby exercising an executive function. Finally, Ralph Hunter Tracy, an S.E.C. employee, conducted an administrative proceeding and found against the deponent thereby exercising a judicial function.

(S) Unless restrained and enjoined, the S.E.C. will continue to engage in illegal and unconstitutional acts and practices and will continue to promulgate new and unconstitutional rules and regulations and the People of the United States will suffer irreparable harm by virture of the illegal and unconstitutional acts and practices of the S.E.C.

(T) In its fiscal year ended June 30, 1973, the S.E.C. received total filing fees of $22.2 million. These included fees from registered broker-dealers and from so-called "12G reporting companies." Needless to say, the plaintiffs herein did not pay any of the required fees. A copy of pages from the S.E.C. annual report confirming these facts is attached hereto and marked exhibit A.

3. The remaining purpose of this affidavit is to reply to certain statements made in the "memorandum of law" submitted by the S.E.C. The S.E.C. has the annoying habit of asserting various facts in its memorandums which are unsupported by affidavits and which are not found anywhere in the record. During the course of my three year long civil proceeding before Judge McLean and later Judge Ward, the S.E.C. never submitted an affidavit in opposition to any of the numerous motions. Instead, the S.E.C. submitted "memorandums." These memorandums have contained assertions of facts which could not be found in the record and which were sometimes fanciful. This did not appear to bother Judge Ward who, on several occasions, adopted certain facts which were stated in these so-called memorandums. It appears to be the policy of the S.E.C. not to submit affidavits.

4. In the instant case, on page 13-4 of the memorandum of the S.E.C., the following statement is made:

> "Nor is the Commission aware that Mr. Sloan has even sought a hearing, formal or otherwise, or made any attempt to demonstrate

to the Commission that the public interest did not require such suspensions."

5. That statement, which is reiterated on page 21 of the same memorandum, is objectionable because there is no affidavit or other evidence to support this statement. However, so the record is clear, the fact is that I have requested a hearing with regard to a suspension of trading but for the opposite purpose. In Aug. of 1973, when I had a substantial short position in shares of Canadian Javelin, Ltd., I wrote a letter to Larry Grimes of the S.E.C. requesting a hearing into the market manipulation of Canadian Javelin, Ltd. A copy of this letter is attached hereto and marked exhibit B. This is one of the letters referred to in paragraph 187 of the complaint. Contrary to what the S.E.C. claims in its answer, the S.E.C. did not respond either in writing or by telephone to this letter. In fact, I found Larry Grimes virtually impossible to reach by telephone.

6. In any event, I am not aware of any procedure to obtain administrative review of S.E.C. trading suspensions. Mr. Taylor, counsel for the S.E.C., has advised me that as far as he knows there has never been an administrative hearing or any other kind of hearing before the S.E.C. with regard to a suspension of trading. Furthermore, Mr. Taylor has advised me that if I were to request administrative review of the Canadian Javelin, Ltd. suspension, assuming the S.E.C. were to grant my request, the burden of proof would be upon me to show that the suspension of trading should be lifted.

7. Page 6 of the memorandum contains a statement that:

"...Commission officials visited his place of business and questioned plaintiffs' secretary at that place of business with respect to the conduct of the brokerage house."

8. The complaint, in paragraph 140, does not say that at all. As a

matter of fact the two S.E.C. employees involved did not, so far as I know, ask the secretary, Helga Thorvardardottir, any questions with respect to the conduct of the brokerage house. Instead, they demanded and obtained her name, her home address and her home telephone number. Furthermore, they interrogated her with regard to her status with the United States Department of Immigration. In addition, they detained her in my office against her will. All of this took place out of my presence and without my knowledge or consent.

9. Finally, page 6 of the memorandum refers to "unspecified threats" by "unspecified persons." It is true that the threats have been unspecified. However, these threats have been, in substance, threats against my life. There have been so many such threats, one of which occurred approximately one month ago, that no purpose would be served in specifying them all. However, I have been able to establish that all of these threats against my life are the result of untrue statements made about me by one Hafdis Simonarson, an attractive young woman from Iceland who was formerly employed by me. I have further established that she is attempting to retaliate for something I supposedly did in early 1973 and, aided by the circumstances described in paragraph 143 of the complaint, she has become adept at making statements which connect my problems with the S.E.C. and the death of her boyfriend, to whom she now claims to have been married, in such a way as to make people who listen to her and believe her want to kill me. I did not name her as a defendant because to do so would be to open up a whole new area for a lawsuit. However, if this action goes to trial, I intend to prove the allegations contained in paragraph 143 by calling, as hostile witnesses, some of the individuals who have threatened, in substance, to kill me.

10. One final point should be made, by way of affidavit, with respect to references to prior litigation made in pages 13 and 23 of the memorandum of the S.E.C. The action referred to in page 13 of this memorandum bears the docket number 74 Civil 5729 and was filed on December 30, 1974. In that action the S.E.C. is alleging violations of federal securities laws from December 18, 1974 through December 30, 1974. Since the S.E.C. filed its answer in the instant action on December 10, 1974, it is obvious that the allegations contained in S.E.C. v. Sloan, supra are based on a different set of facts than those alleged in the action before this court. Thus, no res judicata effect would be possible even if that litigation were to reach a final determination. Furthermore, the determination of a prior lawsuit, referred to in page 23 of the memorandum, could not lead to a dismissal of the instant action on the grounds of res judicata or estoppel. In preparing the complaint before this court, I took care to exclude from the pleadings, allegations that I could have made regarding fraud, misconduct, and other wrongdoing by members of the S.E.C. staff arising out of that litigation. I did so because I feared a possible res judicata effect. For this reason, I have a long list of greivances, not pleaded in the instant complaint which may well be the subject of a subsequent lawsuit, after my appeal to the United States Court of Appeals has been decided.

WHEREFORE, deponent respectfully prays that this Court grant his motions 1) for a preliminary and permanent injunction enjoining the Securities & Exchange Commission from instituting and prosecuting actions for injunctive relief, from promulgating and enforcing rules and regulations, from conducting investigations, and from undertaking any acts or practices under color of the Securities Exchange Act of 1934 or the rules and regulations

promulgated thereunder or under color of any acts, statutes or rules from which the Securities & Exchange Commission claims to derive its authority 2) for summary judgment or judgment on the pleadings as to the Securities and Exchange Commission pursuant to Rule 12 F.R. Civ. P. and 3) for the convening of a three judge court pursuant to 28 U.S.C. 2282 and 28 U.S.C. 2284 to decide both this motion and the ultimate disposition of this action.

Samuel H. Sloan

SAMUEL H. SLOAN

Sworn to before me this
4th day of February, 1975

Roberta E. Fishbein

ROBERTA E. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4618842
QUALIFIED IN NEW YORK COUNTY
COMMISSION EX

ROBERTA E. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4518842
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976

ENDORSED MEMO ON BACK OF CROSS-MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION AND SUMMARY JUDGMENT

Motion denied
See minutes of 2/14/75
So ordered.

s/ Thomas P. Griesa
USDJ

2/26/75

FEB 7 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiffs,

-against-

SECURITIES & EXCHANGE COMMISSION,

Defendants.
- X

74 Civil 2792

NOTICE OF CROSS MOTION
TPG

PLEASE TAKE NOTICE that upon the annexed affidavit of Samuel H. Sloan sworn to the 7th day of February, 1975 and all the papers and proceedings had herein, the undersigned will cross move this court at 4:00 P.M. on February 14, 1975 for an order disqualifying Dennis C. Hensley, Lloyd J. Derrickson and Robert Woldow from acting as counsel for defendants Bunker Ramo, Corp., National Association of Securities Dealers, Inc. and National Clearing Corp., for an order disqualifying George W. Brandt, Jr. from acting as counsel for defendant National Quotation Bureau, Inc. and for an order directing the office of the U.S. Attorney to appear on behalf of defendant United States of America or, in the alternative, for a default judgment against the United States of America pursuant to Rule 55 F.R. Civ. P.

Yours, etc.

SAMUEL H. SLOAN
114 Liberty Street
New York, N.Y.
(212) 583-8565

TO: THOMAS L. TAYLOR
Securities & Exchange Commission
500 N. Capitol Street
Washington, D.C. 20549

GEORGE W. BRANDT, JR.
Counsel for defendant National Quotation Bureau, Inc.
Rogers & Wells
200 Park Avenue
New York, N.Y.

BREED, ABBOTT & MORGAN
Counsel for various defendants
ONE CHASE MANHATTAN PLAZA
New York, N.Y.

DENNIS C. HENSLEY
LLOYD J. DERRICKSON
ROBERT WOLDOW
c/o National Association of Securities Dealers, Inc.
1735 K St., N.W.
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WILKIE, FARR & GALLAGHER
Counsel for Disclosure, Inc.
One Chase Manhattan Plaza
New York, N.Y.

PAUL J. CURRAN
U. S. Attorney
Department of Justice
Foley Square
New York, N.Y.

UNITED STATES COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiffs,

-against-

SECURITIES & EXCHANGE COMMISSION,

Defendants.
- X

74 Civil 2792

AFFIDAVIT IN SUPPORT OF CROSS MOTION

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

SAMUEL H. SLOAN, being duly sworn, deposes and says:

1. I make this affidavit in support of a motion (1) for an order disqualifying Dennis C. Hensley, Lloyd J. Derickson and Robert Woldow, as counsel for defendants Bunker RAmo Corp., National Association of Securities Dealers, Inc. ("NASD") and National Clearing Corp. ("NCC"), (2) for an order disqualifying George W. Brandt, Jr., as counsel for defendant National Quotation Bureau, Inc. and (3) for an order directing the office of the United States attorney to appear as counsel for the United States of America or, in the alternative, for a default judgment against the United States of America pursuant to Rule 55 F.R. Civ. P.

2. To begin with, I do not know precisely who is acting as counsel for defendants Bunker Ramo Corp., NASD and NCC. After the amended complaint was filed I was initially contacted by telephone by a Mr. Dennis Hensley who said that he represented the NASD. He told me that the NASD was going to represent Bunker Ramo Corp. in this proceeding.

3. At this point, I became confused. It was and is obvious to

me that the NASD is not an attorney at law nor is the NASD a member of the bar of this court. Thus, the NASD cannot represent Bunker Ramo Corp.

4. When I received answers from the three defendants in question, all of which arrived in the same envelope, I discovered the names of two additional attorneys, Robert Woldow and Lloyd J. Derrickson, on the answers. Furthermore I found the name of Breed, Abbott & Morgan, a well known New York law firm, on all three answers.

5. Subsequently, I received a letter from Breed, Abbott & Morgan which stated that although it was counsel of record for defendants Bunker Ramo Corp., NASD and NCC, the actual litigation was being handled by the Washington, D.C. office of the NASD and that all papers, except orders to show cause and other short term orders, should be served there. Thus, it seemed Breed, Abbott & Morgan was not actually appearing in this case.

6. On January 10, 1975, a pre-motion conference was held in the robing room of Judge Griesa's court. At that time two new attorneys appeared. I spoke to both of them outside of the courthouse and they seemed reluctant to give their names. However, one identified himself as anti-trust counsel for Bunker Ramo Corp. and the other said he was appearing for the NASD, although they did state their names, I am unable to remember what they were. In any event, neither of these attorneys were named Mr. Hensley, Mr. Derrickson or Mr. Woldow.

7. This presented a problem because the court, at the conference on January 10, 1975, directed me to serve by 5:00 P.M. an order to show cause on all attorneys present. I did not have a sufficient number of copies of the proposed order with me at the time and by the time I could

make additional copies, the two individuals in question had left the vicinity of the courthouse. For this reason, I had to run around the financial district in order to serve everybody by 5:00 P.M. Also, I was forced to serve Breed, Abbott & Morgan since I did not know where the individuals who had appeared at the pre-motion conference could be found.

8. I have no objection to having Breed, Abbott & Morgan appearing on behalf of both the NASD and the NCC. However, I do object to having Breed, Abbott & Morgan representing these two defendants and also defendant Bunker Ramo Corp., because I believe there will be a possible conflict of interest. I also object to having house counsel for the NASD appearing under the name of Breed, Abbott & Morgan. It is evident that Mr. Hensley, Mr. Derrickson and Mr. Woldow are not associated with Breed, Abbott & Morgan but are, instead,employed by the NASD and/or the NCC.

9. I also believe it is against the intent of the rules of this Court for house counsel to appear in an action in the Southern District of New York. Obviously, if Mr. Hensley, Mr. Derrickson or Mr. Woldow were to lose their jobs, or, for whatever reason, were to become no longer employed by the NASD or the NCC, then other counsel would have to be substituted. This might lead to an embarassing situation.

10. Finally, I note that a recent motion to dismiss was made by Mr. Derrickson and Mr. Woldow. Mr. Hensley's name was not to be found anywhere on the motion papers and it is possible that he is no longer with the NASD. Although, the motion papers state that a motion to dismiss is being made on behalf of defendant Bunker Ramo Corp. as well as defendants

NASD and NCC, the name of Bunker Ramo Corp. does not appear anywhere beyond the notice of motion and introductory statements made in the memorandum and affidavits in support of the motion. Thus, it is apparent that Bunker Ramo Corp. is not being adequately and properly represented.

11. The apparent reason for this confusing and unusual state of affairs is stated on pages 4-5 of the memorandum of law in support of the motions of these defendants. The memorandum states:

> "On December 17, 1968, defendants NASD and Bunker Ramo entered into an operating agreement which provided for the capitalization, implementation and operation of a nationwide automated quotations system for the over-the-counter securities market. ...Under the terms of the contract, the NASD is obliged to defend Bunker Ramo when said is operating the NASDAQ system in accordance with NASD rules and procedures."

12. I believe that the local bar association might have some unkind words to say about this contract. Thus, I believe that my motion should be granted.

13. Furthermore, for two reasons, it is evident that, in the event the motions to dismiss are denied, defendant Bunker Ramo Corp. will be appearing by independent counsel. First, Bunker Ramo Corp. sent its "anit-trust counsel" to the pre-motion conference. Second, on pages 1 and 2 of the memorandum, the following statement is made:

> "Therefore, the joining by the defendants for these motions should not be deemed to preclude any one of the defendants from defending this action individually in the event the motions hereinabove described are not granted."

14. I find this objectionable and I believe that all counsel who intend to appear in this action should appear now. Further, I believe Breed, Abbott & Morgan should be disqualified from representing both

Bunker Ramo Corp. and the NASD on the grounds of conflict of interest. I did not request this in my notice of motion only because I assum that Breed, Abbott & Morgan knows much better than I what it should and should not do.

15. The next subject of this motion is Mr. George W. Brandt, Jr. Mr. Brandt has the distinction of being the first person ever to involve me in a lawsuit. Mr. Brandt was employed by the S.E.C. for a short period during the middle of 1971. While he was employed by the S.E.C., he was assigned to conduct an investigation of me. Mr. Brandt took my deposition twice and, following numerous meetings with me in his office, the S.E.C. apparently on Mr. Brandt's recommendation, instituted suit against me on June 17, 1971.

16. I spoke to Mr. Brandt in late November, 1974, when he called to ask me for a stipulation extending the time of defendant National Quotation Bureau, Inc. ("NQB") to answer. I agreed readily to Mr. Brandt's request. However, it was my impression from this conversation that Mr. Brandt bore some personal animosity towards me arising from the prior litigation three years earlier.

17. For this reason, it has been my fear that Mr. Brandt's appearance in this action might be an impediment to the orderly progress of this litigation. I am only somewhat comforted by the knowledge that Mr. Brandt is not a memeber of the firm of Rogers & Wells and that his work is presumably reviewed by a supervisory attorney.

18. Nevertheless, I still believe that Mr. Brandt's presence might be an impediment. For example, there is now a motion pending before this court for a preliminary injunction against the NQB. It is apparent to me that it is in the economic interest of the NQB for the motion to be granted.

In other words, the NQB would like to lose, at least as far as this motion is concerned. The reason for this is that if the NQB were required to permit me to list in the pink sheets the name of any security, it would derive listing fees for each security listed. Furthermore, in the interest of fairness, the NQB would be compelled to let other brokers list their names under any security also. This would have the effect of substantially increasing the income which the NQB derives from all of its subscribers. Thus it appears to me that counsel for the NQB, in opposing this motion, is not representing the best interests of its client. Instead, it is protecting the vested interest of the S.E.C. in maintaining the fabric of so-called "federal securities laws."

19. As a matter of fact, my problems with the S.E.C. go directly back to professional misconduct on the part of both Mr. Brandt and his then immediate superior Mr. Nortman. When the S.E.C. commenced its original action against me I was then in compliance with federal securities laws and the S.E.C. had no basis for a belief to the contrary. Mr. Brandt falsely claimed otherwise. After the complaint was filed on June 17, 1971 and served on June 18, 1971, a conference was scheduled before Judge McLean for Monday, June 21, 1971.

20. At that conference, Mr. Brandt falsely represented to Judge McLean that I had not submitted in April, 1971, trial balance to the S.E.C. as requested. I knew that I had submitted the trial balance and the Mr. Brandt well knew this to be the case.

21. Furthermore, Mr. Brandt falsely represented to Judge McLean that the S.E.C. had traced a mysterious $25,000 entry through my books and that the S.E.C. believed I was, in effect, in the process of absconding

with this $25,000.

22. This statement was completely false. To begin with, there was no mysterious $25,000 entry on or off my books. Secondly, Mr. Brandt had never looked at my books and had no basis to make such a representation. Finally, Sheldon Kanoff, the S.E.C. compliance examiner who had been assigned to investigate me had made no effort to examine my books prior to the filing of the complaint.

23. As the result of these deliberate lies told by Mr. Brandt, I practically started screaming in Judge McLean's chambers and my then attorney, Mr. Weiss, who was sitting on my right, almost had to restrain me physically from punching Mr. Brandt, who was sitting on my right, in the nose. Mr. Weiss later told me that if I had kept my mouth shut Judge McLean would probably not have signed the temporary restraining order.

24. These events occured three and one half years ago. However, on January 10, 1975, I had occasion to be reminded of these past events. That was the date of a pre-motion conference before this court which had been scheduled for 3:00 P.M. that day. At about 1:15 P.M. that day I went to the offices of Rogers & Wells in the Pan Am Building to serve a copy of a proposed order to show cause. I told the receptionist that I wanted to serve papers on George Brandt. The receptionist told me that George Brandt had gone out of the office with another attorney and was not expected to come back until much later that afternoon. I was then sent to the office of an individual who was apparently the clerk who is assigned to receive papers of this sort. I explained to this clerk at length that the conference which had been scheduled for January 10, 1975 had been adjourned until January 24, 1975, but that I would be presenting the proposed order to show cause to the Part I

judge, who happened to be Judge Griesa, at about 3:00 P.M. that day. I personally observed the clerk draw a line through the date of January 10, 1975 in his scheduling book and write the date January 24, 1975 in its place. After inquiring by telephone, this clerk also told me that Mr. Brandt was out of the office.

25. Nevertheless, to my great embarassment, Mr. Brandt and five other attorneys appeared in Judge Griesa's court at 3:00 P.M. for the previously scheduled pre-motion conference. Mr. Brandt then represented to the court that all six attorneys present had been meeting in his office all day and no notification had been received of the re-scheduling of the conference.

26. In view of my prior experience with George Brandt, I happen to believe that he was not telling the truth on January 10, 1975. I find it hard to believe that the clerk employed in his office gave him the proposed order and told him that it would be presented at about 3:00 P.M. and nevertheless failed to tell him that the regularly scheduled conference had been adjourned. Furthermore, Mr. Brandt's statement that there had been a meeting (perhaps it should be called a war conference) in his office all day does not conform with the statements made by both the receptionist and the clerk that he was out of the office.

27. The incident in qu-stion caused me considerable personal embarassment and I feel agrieved by Mr. Brandt. Furthermore, the law in this sort of situation is such that Mr. Brandt should be disqualified. (See Handleman v. Weiss 368 F. Supp. 258 (1973)). In short, I believe that this part of my motion should be granted.

28. Before I go to my next topic, I feel I should state that the

appearance of Mr. Taylor in this case is somewhat inconvenient. I am now in litigation in five cases with Mr. Taylor. The other four are in the United States Court of Appeals for the Second Circuit. The problem with Mr. Taylor is that he is in Washington, D.C. and I am in New York. Lately, I have not experienced my previous problems in getting Mr. Taylor on the telephone. On this point, I presently have no complaint. However, on one occasion in the past it took me over a month to get a simple stipulation from Mr. Taylor. Problems of this sort are bound to occur as long as the S.E.C. insists on being represented by its Washington, D.C. office whenever it is defending or on appeal. Mr. Selvers, my loyal opposition in the New York Regional Office of the S.E.C., is leaving the Commission immenintly (or has already left.) Basically, I would prefer that the S.E.C. be represented by one of the many attorneys in its New York Regional office.

29. My remaining motion seeks to require an appearance by the office of the U.S. attorney or, in the alternative, for a default judgment against the United States of America. I do not expect this court to grant my motion for a default judgment although technically I am entitled to it. This motion is made in good faith as the only way to force the U.S. Attorney to come into this case. A copy of a letter indicating some of my reasons for this motion is attached hereto and marked exhibit A. My belief is that the U.S. Attorney may agree with me on many of the arguments advanced by me. One basis for this belief is the fact that the office of the U.S. Attorney now has an action pending entitled United States of America vs. N.A.S.D., in which the United States Supreme Court noted probable jurisdiction on October 15, 1974 (Docket No. 73-1701). It appears

to me that the legal issues in that appeal relating to violations of anti-trust laws are the same as the legal issues involved in the action before this court. If that is correct, the U.S. Attorney should actually be on my side.

WHEREFORE, the undersigned respectfully prays that this court grant his cross motion (1) for an order disqualifying Dennis C. Hensley, Lloyd J. Derrickson and Robert Woldow from actin as counsel for defendants Bunker Ramo Corp., National Association of Securities Dealers, Inc. and National Clearing Corp. (2) for an order disqualifying George W. Brandt, Jr. from acting as counsel for defendant National Quotation Bureau, Inc., and for an order directing the office of the U.S. Attorney to appear on behalf of defendant United States of America or, in the alternative, for a default judgment against the United States of America pursuant to Rule 55 F.R. Civ. P.

Samuel H. Sloan

SAMUEL H. SLOAN

Sworn to before me this
7th day of February, 1975

Notary Public

ROBERTA E. FICHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4518842
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976

A198

Samuel H. Sloan
114 Liberty Street
New York, N.Y. 10006
(212) 583-8565

February 4, 1975

Naomi Reese Buchwald, Esq.
Office of the U.S. Attorney
Foley Square
New York, New York

Re: Sloan vs. S.E.C. et al.
74 Civil 2792 (TPG)

Dear Ms. Buchwald:

I am in receipt of a letter addressed by you to the Hon. Thomas P. Griesa, a copy of which was apparently sent to me and counsel for certain other defendants. Although you thoroughly trounced me the last time we had a lawsuit together, I wish to express a strong preference for having the office of the United States attorney appear in this proceeding independent of the S.E.C. There are numerous reasons for this, some of which are, frankly, related to strategic advantages which I feel I might enjoy if the U.S. Attorney's office were to appear.

However, a recent motion to dismiss by the S.E.C. has made, in my opinion, an independent appearance by the U.S. Attorney imperative. The S.E.C. contends, among other things, that the S.E.C. lacks the capacity to be sued. No mention is made of the fact that the United States of America is also joined as a party. This is a direct contradiction of a statement made in your letter that you doubt that the United States of America constitutes a separate suiable entity. From this and from other arguments advanced in the motion to dismiss, it is clear that Thomas L. Taylor does not and does not intend to represent the United States of America and that he represents the Securities & Exchange Commission alone.

You may be interested to know that the most desirable end result of this lawsuit, from my point of view, would be the entire and complete elimination of the Securities & Exchange Commission. I claim, among other things, that the Securities & Exchange Commission is not even part of the United States Government and is threfore a legal nullity. If this argument is successful, and the S.E.C. ceases to exist, my claim for money damages would go to the individual commissioners and to the United States of America under the Federal Tort Claims Act. For a variety of obvious reasons it would be preferable for me to collect a money judgment from the United States of America rather than from the commissioners.

I believe that an appearance by the U.S. Attorney's office would be an invaluable aid to the equitable resolution of this litigation in any case. For example, if the U.S. Attorney's office were to file an answer, the

EXHIBIT A

Antitrust Division of the Department of Justice would be compelled, in effect, to render an opinion on the anti-trust questions raised in my complaint. In addition, because of the broad thrust of the constitutional questions raised in the complaint and because I may have an appeal directly to the United States Supreme Court, I believe the U.S. Attorney's office should appear.

It appears that should the U.S. Attorney continue to fail to appear in this proceeding, my remedy would be to move under Rule 55 F.R. Civ. P. for a default judgment against the United States of America. However, I am reasonably certain that Judge Griesa would not grant such a motion under the circumstances of this case and in light of the language of Rule 55(e) F.R. Civ. P. However, by moving for a default judgment, I might be able to compel an appearance by the office of the U.S. Attorney. Nevertheless, I do not like to make motions which have virtually no chance of being granted. Therefore, I feel it is appropriate that I simply request that you appear.

Very truly yours,

Samuel H. Sloan

Samuel H. Sloan

CC: Hon. Thomas P. Griesa
United States District Court
Southern District of New York
Foley Square
New York, N.Y.

Thomas L. Taylor, Esq.
Securities & Exchange Commission
500 N. Capitol St.
Washington, D.C. 20549

Breed, Abbott & Morgan, Esqs.
Counsel for various defendants
One Chase Manhattan Plaza
New York, N.Y. 10005

Dennis Hensley, Esq.
Counsel for National Association of Securities Dealers
1735 K St., N.W.
Washington, D.C. 20006

Wilkie, Farr & Gallagher, Esqs.
Counsel for Disclosure, Inc.
One Chase Manhattan Plaza
New York, N.Y. 10005

Rogers & Wells, Esqs.
Counsel for National Quotation Bureau, Inc.
200 Park Avenue
New York, N.Y. 10017

MEMO ENDORSED ON BACK OF CROSS-MOTION FOR ORDER DISQUALIFYING

Motion denied
See minutes of 2/14/75
So ordered.

s/ Thomas P. Griesa
USDJ

2/21/75

U.S. DISTRICT COURT
FILED
FEB 13 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiffs,

-against-

SECURITIES & EXCHANGE COMMISSION,
et al.,

Defendants.
- X

NOTICE OF CROSS MOTION

74 Civil 2792
(TPG)

PLEASE TAKE NOTICE that upon the annexed affidavit of Samuel H. Sloan sworn to the 11th day of February 1975 and upon prior affidavits, the undersigned will cross move this court on February 14, 1975, for an order disqualifying Thomas L. Taylor III from appearing as counsel for defendant Securities & Exchange Commission on the grounds that Thomas L Taylor III is not a member of the bar of this court, is not admitted to practice law in this court and has not moved for leave to appear as counsel in this action and on the further grounds that the appearance of an attorney from the Washington, D. C. office of the S.E.C. has caused and is likely to continue to cause inconvenience to all other parties in this action and to the court.

Yours, etc.
Samuel H. Sloan
SAMUEL H. SLOAN
114 Liberty Street
New York, N.Y. 10006
(212) 583-8565

TO: ALL COUNSEL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiffs,

-against-

SECURITIES & EXCHANGE COMMISSION,
et al., Defendants.
- X

AFFIDAVIT IN SUPPORT OF CROSS MOTION AND SUPPLEMENTAL AFFIDAVIT
(TPG)

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

SAMUEL H. SLOAN, being duly sworn, deposes and says:

1. I have examined the file of attorneys admitted to practice in this court which is to be found in Room 604 of the U.S. Courthouse at Foley Square, New York, N.Y.

2. From an examination of this file, I have determined that Thomas L. Taylor III, counsel of record for the S.E.C., is not an attorney admitted to practice in this court.

3. From examination of this same file, I have also determined that Dennis C. Hensley, Lloyd J. Derrickson and Robert Woldow, counsel of record for the NASD and the NCC are not admitted to practice in this court.

4. Mr. Taylor has personally appeared before this court three times, twice in September, 1974 and most recently on January 10, 1975. At no time has he informed the court that he is not a member of the bar of this court and at no time has Mr. Taylor moved for leave to appear as counsel of record.

WHEREFORE, the undersigned respectfully prays that his motion to disqualify Thomas L. Taylor III for appearing as counsel for defendant Securities & Exchange Commission be granted.

Samuel H. Sloan

SAMUEL H. SLOAN

Sworn to before me this
11th day of February, 1975

ROBERTA E. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4318842
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 19[illegible]

ENDORSED MEMO ON BACK OF MOTION TO DISQUALIFY
THOMAS L. TAYLOR III

MOTION DENIED. SEE MINUTES OF 2/14/75.

SO ORDERED.

s/ Thomas P. Griesa

2/21/75

U.S. DISTRICT COURT
FILED
FEB 13 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN, & CO.,

Plaintiff,

-against-

SECURITIES & EXCHANGE COMMISSION,
et al.,

Defendants.
- X

74 Civil 2792

AFFIDAVIT IN OPPOSITION TO MOTIONS OF DEFENDANTS NASD, NCC AND BUNKER RAMO CORP.
TPG

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

SAMUEL H. SLOAN, being duly sworn, deposes and says:

1. I make this affidavit in opposition to the motions of defendants National Association of Securities Dealers, Inc. ("NASD"), National Clearing Corp. ("NCC"), and Bunker Ramo Corp. to dismiss the complaint and for judgment on the pleadings. The purpose of this affidavit is to demonstrate the existance of triable issues of fact.

2. On page 23 of a pamphlet offered as an exhibit by the NASD and entitled "NASDAQ and the Listing Dilemma" an example is given of "How NASDAQ works to benefit investors and OTC companies."

3. Although this example might seem plausible to anyone not directly familiar with the workings of the OTC market (such as Mr. Macklin), the fact is that the example is almost preposterous and could not occur except under the most unusual circumstances.

4. In summary, the example on page 23 states that Smith

& Co., a retail broker in Phoenix, Arizona, calls a market maker in Cleveland and offers to sell 1000 shares of XYZ Company at 47 1/2. The Cleveland broker is showing the best bid in NASDAQ at 47 1/2 with the next highest bidder showing a bid of 47 3/8. In the example, the Cleveland broker agrees to buy 700 shares at 47 1/2 and states that he cannot match the 47 3/8 bid on the balance. Smith & Co. then calls another market maker in New York and sells the remaining 300 shares to him at 47 3/8.

5. In order to verify my opinion of the plausability of this example, I read it over the telephone to several experienced market makers. One said that the trader who bought the 700 shares at 47 1/2 should be fired on the spot. Another noted that 47 is an unrealistically high price for an over-the-counter stock especially considering the current state of the market. All agreed with me that the example is absurd, especially since it is given as an example of a typical OTC transaction.

6. In real life, the market maker in Cleveland would do one of the following things:

A. He would buy 1,000 shares of XYZ company at 47 1/2.

B. He would buy 100, 200, 300 or 500 shares of XYZ company at 47 1/2 and possibly bid either 47 3/8 or 47 1/4 on the balance. (He might conceivably buy 400 shares at 47 1/2, but it would be considered somewhat bad form.)

C. He would offer to buy 1,000 shares at 47 3/8 and, if the other broker wanted to show a trade at 47 1/2, he would then buy 100 shares at 47 1/2 and 900 shares at 47 3/8. (Because of the

commission rate structure, the customer might receive greater total proceeds by selling 1,000 at 47 3/8 rather than 100 at 47 1/2 and 900 at 47 3/8.)

D. Finally, the Cleveland market maker might try to chisel. He might bid 47 1/4, 47 1/8 or even 47 for the entire 1,000 shares and try to convince Smith & Co. that this is better than the overall price he would receive by attempting to make sales to several market makers or "shopping the order" as it is called. (I personally never reduce myself to chisling on this level. However, certain firms, particularly Mayer & Schweitzer, Inc., and certain traders, such as a trader most recently and presently employed by Hill, Thompson, Magid & Co., are notorious for chisling at every opportunity. These traders are known in Wall Street as "weasles." Actually, since the example given involves a $47 stock, it might be perfectly legitimate to bid 47 for the entire 1,000 shares. This price might be as good or better than one would receive in a similar situation on the New York Stock Exchange.)

7. After discussing the matter with my colleagues, I can only visualize three situations in which the transaction, as described, could take place. They are as follows:

A. The trader was in the bathroom. A principal in the firm, who was generally unfamiliar with OTC market making, happened to pick up the telephone and, for reasons best known to him, decided to buy 700 shares of XYZ Company at 47 1/2.

B. The trader in Cleveland happened to have an

agency order from a customer of the firm to buy exactly 700 shares of XYZ Company at 47 1/2 and the trader did not want to take any stock into his own position.

C. The trader was actually short 10,700 shares (or some similar figure) and decided to cover 700 shares of his short position and to release Smith & Co. on 300 shares in the hopes that by selling 300 shares to the other market makers, Smith & Co. would drive the price of XYZ Company down so that the Cleveland market maker could cover the remainder of his short position at a lower price.

8. Of the three above possibilities, A is not an example of anything except bad office management, and B indicates that the Cleveland broker is acting in a capacity other than that of a market maker. Thus, the only realistic possibility is C. However, in C, while the trader might be doing the best thing from a strategic point of view, he would be engaging in "unprofessional" conduct. (Which explains why one of my colleagues thought he should be immediately fired.) More importantly, if one of his competitors, a rival market maker, were to find out about the trade he would immediately be able to deduce that the Cleveland market maker had a substantial short position since this is the only plausible explanation for such a trade. (Market makers jealously guard information of this sort because it can be used against them.)

9. Simple arithmetic reveals the reason it would be wrong or "unprofessional" to buy the 700 shares at 47 1/2. For example, the Cleveland broker could agree to buy only 300 shares at 47 1/2 and could bid 47 3/8 for the remaining 700 shares. Smith

& Co. would have no choice but to accept this bid because he would be getting the best execution he could realistically expect on a market order of this sort since he would know that the market maker in Cleveland knows that he has the only 47 1/2 bid. At the same time the Cleveland broker could, if he so desired, sell 300 shares at 47 3/8 to another market maker. Thus, the Cleveland broker would wind up owning the same 700 shares at a cost of $50 less.

10. These facts relate directly to the allegations contained in paragraph 120-1 of the amended complaint and to other paragraphs of the amended complaint. (Obviously, the truth of the allegations contained in those paragraphs are in dispute.) Before the inception of NASDAQ, the Cleveland broker would have no way of knowing that his bid of 47 1/2 was higher than that of all other market makers. This is because, before NASDAQ, a market could only be obtained by calling a market maker and in many cases market makers might not quote their true market to a competitor or to somebody who might be checking a market on behalf of a competitor. For example, before NASDAQ the broker in Cleveland might call the broker in New York to find out his market. The broker in New York might quote a market of 47 5/8 - 48 1/8 to his competitor, whereas his real market might be only 47 - 47 1/2. In so doing, he would be gambling that the Cleveland broker would not "hit his bid" at 47 5/8. If his gamble worked, the broker in Cleveland might buy the 1,000 shares at 47 1/2 thinking he was getting a bargain as the result of a devious trap set by the New York market maker in giving out a spurious quote when he was actually short XYZ Company and was trying to force the price down.

After buying the 1,000 shares at 47 1/2, the Cleveland trader would find himself unable to make a sale to the New York market maker at 47 5/8 and would be loaded down with a big position which he might be forced to sell at a loss thereby playing directly into the hands of the New York market maker. At the same time, the customer of Smith & Co. would be getting the price of 47 1/2 which would be a better price than he would get on the NASDAQ system.

11. A copy of a Wall Street Journal article indicating what the OTC market was like before NASDAQ came into being is attached hereto and marked Exhibit A. Before NASDAQ, the OTC market was always considered the best example of a pure "free market" system. OTC traders were considered notoriously cut-throat because they were constantly attempting to devise ways to bring about the undoing of each other. Since NASDAQ, that has changed. Because of the way the NASDAQ system works, there is a natural tendency for OTC traders to "work together" so that they all make the same market thereby forcing the public to trade at prices effectively fixed by the NASDAQ market makers.

12. In May, 1974, I attended the annual formal dinner of the Securities Traders Association of New York (known as the "STANY" dinner). There, the honor of being declared "OTC Man of the Year", which is awarded annually by the "OTC Market Chronicle", was given to Gordon S. Macklin, one of the affiants in the instant motion. The announcement of this award was greeted with a chorus of boos. When it was stated that Mr. Macklin was receiving this award because of his work in implementing the NASDAQ system, the response was a second chorus of boos. While I do not like to

embarass Mr. Macklin personally by reference to these past events, the fact is that both Mr. Macklin and his NASDAQ system are disliked throughout the so-called OTC market community. The reasons for this should be obvious. To begin with, Mr. Macklin is not an OTC trader and presumably has never picked up the telephone and entered into an OTC transaction with an OTC market maker. Nevertheless, he is in a position where he can tell OTC market makers how to run their business. Secondly, Mr. Macklin is, in theory, the freely elected president of an independent trade association, namely the NASD, whereas, in reality, Mr. Macklin's presidency has been prescribed by the regulatory authorities and his election as President of the NASD was about as free as the election of Nguyen Van Thieu as the President of South Viet Nam. Thirdly, the NASD, of which Mr. Macklin is President, has the stated objective of putting most of its members out of business. In principle, Mr. Macklin and the NASD should represent its members before Congress and the public. Instead, Mr. Macklin and the NASD represent the S.E.C. in its ongoing effort to make impossible to operate a brokerage business at a profit. Finally, Mr. Macklin is presiding over the destruction of the industry he was elected to represent. Since the NASDAQ system came into being, more than half of the then existing market makers have gone out of business and most of the rest have lost money steadily and are hanging on in the hopes of better days ahead.

13. I first came to Wall Street in July of 1968 when I went to work in the over-the-counter trading department of Hayden, Stone & Co. Since that time, I have effected an estimated 30,000 over-the-counter transactions. From July 28, 1971 until October 12, 1971 I was associated with the New York Stock Exchange member firm of J.S. Love & Co. ("Love") and there made markets in about 20 securities on NASDAQ. During this time, I acquired first hand experience with the NASDAQ system. When I arrived at Love it was decided that the firm would go on unlimited service, which then cost $600 per month, rather than the standard service, which then cost $400 per month, because of the increased use I would be making of Love's NASDAQ machine. The reason for this was that on the standard service there is an extra charge of 10¢ per quote in excess of a certain minimum, whereas unlimited service has no such charge. I personally called both Bunker Ramo Corp. and the NASD in order to make this change. Bunker Ramo Corp. told me that it could make this change in billing only if it was given one month's notice. I was outraged at this because of the increased cost this would mean. Bunker Ramo Corp. then informed me that it only did the billing and the actual rates were set by the NASD. I then called the NASD and spoke to Marc De Nat. Mr. De Nat told me that under the contract the NASD signed with Bunker Ramo Corp., members of the NASD would not be permitted to change their type of service without one month's advance notice. As a result Love was required to pay an additional $800 for service during the one month that it was required to give notice. I

subsequently learned that a large number of other subscribers to NASDAQ had experienced the same problem and were similarly outraged.

14. After my personal unfortuante experiences with NASDAQ, I decided to avoid the system. However, other brokers who had been lured into signing two-year contracts (as required) frequently complained to me. One of the complaints was that these brokers had signed the standard contracts which gave the Bunker Ramo Corp. the right to raise the rates it was charging to the brokers unilaterally without any possible recourse by the brokers. Bunker Ramo Corp. did, in fact, raise and change the rates several times so that the brokers soon found themselves paying much more than they had originally been told they were going to be paying. The principal change was that Bunker Ramo Corp. abolished its unlimited service so that all brokers were required to pay 10¢ a quote. Because of the way the NASDAQ system works, market makers are forced to be constantly checking the markets of their competitors and thus the typical market maker is likely to require several quotes a minute. This fact is referred to on page 8 of the pamphlet entitled "NASDAQ and the OTC" when it states that "firms that maintain markets and inventories in OTC stocks constantly update and adjust their quotations throughout the day." For this reason, when Bunker Ramo Corp. discontinued its unlimited service, the NASDAQ bills paid by its subscribers soared. One market maker I spoke to, George Sozek of George E. Sozek & Co., who had only one employee and made markets in 30 NASDAQ stocks,

told me that he was paying over $2,000 per month for the use of NASDAQ and that he had decided to go out of business rather than to continue on this basis. However, that caused another problem because the brokers on NASDAQ had all signed two year contracts which Bunker Ramo Corp. refused to break even in the case of brokers who had gone out of business. I was told that one broker who wanted to go out of business, Savarin Corp., was offering to pay $5,000 in advance to anyone who was willing to assume the remainder of its NASDAQ contract. Other brokers I know of have adopted a different approach. Not long ago I spoke to Mr. Schweickart, the principle of the once prestigious firm of Schweickart & Co., which recently went out of business. Mr. Schweickart told me that NASDAQ had ruined the over-the-counter market and that he had called Bunker Ramo Corp. and told them to come and take away their machine. He also said that he was not going to pay anything to Bunker Ramo Corp. on the unexpired portion of his contract and that if Bunker Ramo Corp. wanted to sue him that would be fine with him. This now seems to be the general attitude in Wall Street. In a fairly recent edition of the New York Law Journal I saw that on one day Bunker Ramo Corp. had obtained judgments, each in the amount of approximately $20,000, against two small borker dealers. Even as much as two years ago a principle of the firm of Mitchum, Jones & Templeton, Inc. was quoted as saying that his firm had closed its OTC trading department after finding it impossible to make money because of NASDAQ.

15. I believe I can speak for almost every one of the

3,000 over-the-counter traders in attendance at the latest STANY dinner in saying that the entire NASDAQ system should be scrapped. The fact is that nobody would be willing to pay for the cost of NASDAQ if it were not backed by the regulatory authorities. I do not know of anyone in the over-the-counter market who still believes that NASDAQ is a good thing for the industry.

16. I believe that this is a logical result. Because of the advanced technology involved in the implementation of the NASDAQ system, the cost of this system is necessarily high. For this reason, market makers must increase their trading profits just in order to be able to pay this added cost. In the long run, these incresed trading profits must necessarily come out of the pockets of public customers who buy and sell over-the-counter stocks. Once the system has adjusted itself, as it must do with the passage of time after its implementation, it follows that these increased trading profits must come as the result of less competition. This has, in fact, occured because (1) most market makers have gone out of business and (2) those market makers who remain in business are less willing to take positions and usually prefer to quote the same markets as their competitors. Before NASDAQ, if one had, for example, 500 shares of a stock for sale and five market makers were quoting a market of, for example, 47 1/4 bid, 47 3/4 offered, one could be reasonably assured of selling all 500 shares at 47 1/4 even if it was necessary to sell 100 to each market maker. This was true because trading ethics prohibited which was known as "running in front of an order." With NASDAQ,

however, trading ethics have become obsolete. In the same situation a broker with an order to sell 500 shares at the market would call the first broker and offer the entire 500 shares.(It is considered unethical to show only part of an order.) In all likelihood, the first broker would take 100 shares at 47 1/4 and immediately drop his market on NASDAQ to either 47-1/2 or to 46 7/8 - 7 3/8. The broker with the order would then call the second market maker and offer 400 shares at 47 1/4. If the broker with the order was quick on the telephone he would hit the second market maker's bid before the second market maker had a chance to check his machine. (Speed is of the utmost importance in this business.) The second market maker would look on his NASDAQ machine and see one market maker quoting 46 7/8 - 7 3/8 and the other four (including himself) quoting 47 1/4 -3/4. He would then immediately know that 100 shares had already been sold to the first market maker and, for that reason, he would buy 100 shares and drop his own market also. By the time the broker with the order got around to calling the third, fourth, and fifth market makers they would undoubtedly have observed at least the first market maker drop his price and they would, in anticipation of receiving a call from a seller, lower their markets to 47-1/2. Thus, by the time the third market maker was called the best bid price would, in all probability, be 47. Thus the end result would be the sale of 200 shares at 47 1/4 and 300 shares at 47.

17. In order to try to keep this from happening, the broker with the order, assuming he were sharp enough, would push the "transmit" button, which gives price quotations, the instant

he got the third market maker on the telephone and before he announced his desire to sell 300 shares at 47 1/4. The idea in doing this would be to catch the third market maker off guard before he gets a chance to change his quote. According to page 22 of the pamphlet entitled "NASDAQ and the OTC" it takes five seconds before an updated quotation is reflected on the NASDAQ machine. While this may seem fast by normal standards, it is a long time in the OTC market where transactions are normally effected in as little as three or four seconds. In the situation being described, the broker with the order to sell 300 shares is likely to get into a screaming and ungentlemanly fight with the market maker in the event that he claims that he was in the process of updating his machine at the moment the broker with the sell order called. (OTC traders are supposed to be gentlemen at all times.)

18. In the situation just described, which is fairly typical, the public customer who owned the 500 shares and who sold 200 at 47 1/4 and 300 at 47, wound up with $75.00 less than he would have received had there been no NASDAQ system. Ultimately, that $75.00 does not go into the pocket of the market makers but instead goes to the NASD and to Bunker Ramo Corp. which is in a position to charge whatever the market will bear for its services. However, it could be much worse. If the broker had an order to sell 2,000 shares at the market, he could easily knock the price down to 46 or 45 before completing his order. Traders who execute large orders on NASDAQ with regularity, have told me that it is not uncommon to knock the market down two points on a 2,000 share order only to have the market go back up to its original price within five minutes

after the order is completed. Obviously, a broker with a 2,000 share sell order must expose his position and place himself at the mercy of the market makers in order to get an execution for his customer. It is for this reason, that, since the inception of NASDAQ, a true negotiated market has ceased to exist.

19. When I was an over-the-counter order clerk at Hayden, Stone & Co. and employed to execute over-the-counter orders for public customers of the firm, I used to pride myself on my ability to remember 1,000 telephone numbers and to make an average of about 350 telephone calls to market makers per day. I was respected and perhaps feared for my ability to make telephone calls quickly and to get the best prices for the customers of Hayden, Stone. When the Christmans of 1969 came, I received 32 bottles and other gifts from various Wall Street market making firms. This was something of a record. However, with the advent of modern technology in the form of the NASDAQ system, these particular talents of mine are of no special benefit.

19. As a market maker, I have the same problem. Before NASDAQ, I could rely on my ability to outwit my fellow market makers and I almost never lost money trading a stock. When I went to Love, however, I discovered that whenever I made a good competitive market, I became almost a sitting duck and whenever I made the same market as everybody else, I simply had to wait and hope that somebody with an order might call me rather than somebody else with the same market.

20. For all of these reasons, the glorified version of the way the NASDAQ system is supposed to work, as described by

the affidavits of Gordon S. Macklin and John H. Hodges, Jr. and the exhibits attached threto, fails to describe the way the NASDAQ system actually operates and the overall effect it has on the over-the-counter market.

WHEREFORE, the deponent respectfully prays that the motions of defendant National Association of Securities Dealers, Inc., National Clearing Corp. and Bunker Ramo Corp. to dismiss and for judgment on the pleadings be denied.

Samuel H. Sloan

SAMUEL H. SLOAN

Sworn to before me this
10th day of February, 1975

Roberta E. Fishbein

ROBERTA F. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4518042
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976

THE WALL STREET JOURNAL

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CLXXV NO. 88 ★★★ EASTERN EDITION WEDNESDAY MAY 6, 1970

rket Hot Spot

r-the-Counter Field, ays Hectic, Faces Strains in Plunge

er 'Freddy Ritt' Uses Wits to Produce Profits n Wholesale Stock Deals

y Voiced and Red-Eyed

By RICHARD MARTIN
Reporter of THE WALL STREET JOURNAL

YORK—Meet Frederic W. Rittereiser, own man in a misunderstood business. Rittereiser is "Freddy Ritt" to the s of people who phone him daily. "No- nows my last name," he says. "If they y couldn't spell it."

If they could, they wouldn't use it hey- taken long to pronounce, and in Ritt's line of work—trading securities ver-the-counter market—every fraction cond counts.

over-the-counter market, which is an- way of trading stocks rather than a market place, is the largest and proba- least-known segment of the securities y. About 10,000 common stocks are ac- raded over the counter, more than three the number of issues listed on the 15 exchanges in the U.S. and Canada. some over-the-counter stocks are blue hat could easily qualify for trading on exchanges, many are speculative issues ll, often relatively new companies.

e Plummets

recent weeks, the over-the-counter mar- s been the hardest hit sector of the badly d stock market. In the 18 months since of 1968, the Dow Jones Industrial Aver- measuring blue chips traded on the New Stock Exchange, has suffered a slow, decline of 24.8%. During the same pe- he National Quotation Bureau's index of gh-quality over-the-counter industrial dropped 25.4%—with much of its de- coming in just the past few weeks. This n over-the-counter trading volume has equally dramatic. Traders say it's cur- running 50% to 60% below last Decem- level.

a result, the working pace for traders Freddy Ritt has slowed from frantic to y hectic. Which means that he can walk men's room now, instead of running, and d times a day he can even lean back in ival chair for a couple of minutes without to pick up a phone or shout across the trading room to answer another trader.

If the pace has slowed, the strain has in- d. Traders generally work for a share of s and trading profits they generate for rms, and for many the drop in volume ling prices has been painful indeed. Se- traders who had been making well over 0 annually in recent years are suddenly home only 15% to 20% of their year-ago sa.

d-Mouse Games

Freddy Ritt doesn't seem to be particu- upset. He won't say what he makes, but ll earns more than enough to meet the age payments on his $80,000 Long Island and keep gasoline in his two boats, his r XKE and his wife's Thunderbird.

Cat and Mouse Games

But Freddy Ritt doesn't seem to be particularly upset. He won't say what he makes, but he still earns more than enough to meet the mortgage payments on his $80,000 Long Island home and keep gasoline in his two boats, his Jaguar XKE and his wife's Thunderbird.

Even if he didn't, he wouldn't be looking for a new line of work. Like most others in the business, he thrives on the constant battle of wits, sharp bargaining and frenetic cat-and-mouse games of the over-the-counter market. "If we were playing for bananas, I'd still love this game," he claims. "I'd do it for a hobby if I had another way to earn a living."

The ebullient, 37-year-old Mr. Rittereiser is one of the top traders at G. A. Saxton & Co., a wholesale brokerage firm that "makes a market" in some 450 over-the-counter securities by its willingness to buy and sell those shares at specified prices. The firm trades with retail firms that sell stocks to the public, with other wholesalers, with integrated firms that do both wholesale and retail trading and with institutional clients like mutual funds, bank trust departments and pension funds. Saxton does not deal directly with the public.

Working Under Pressure

Mr. Rittereiser makes a market in 32 of the issues Saxton trades, an average number for a trader at a major wholesale firm. His stocks, which other Saxton traders call "the most dangerous list in the house," range from actively traded over-the-counter blue chips like Anheuser Busch, Kaiser Steel and Pabst Brewing to small, highly volatile issues like Dynell Electronics, King Resources and Stirling Homex.

Over-the-counter trading is always "a high-pressure job," says Gerald C. McNamara, Saxton's president. "Every cent these traders earn comes right out of their hides."

But in the current falling market, the pressure is more intense than ever. When the market is active, traders like Mr. Rittereiser can make money simply by supplying stocks to their customers. But, when customers aren't buying, the traders at various over-the-counter firms have to compete furiously for business—and often they wind up trying to turn a profit by trading with each other.

The strains that result are obvious to anyone watching Mr. Rittereiser and his fellow Saxton traders in action during the course of a working day.

Like most traders, Mr. Rittereiser is at his seat on Saxton's long, cluttered trading desk by 9:30, comparing his own feel for the market with the views of the firm's other traders and with those of competitors who make markets in the same issues at other houses.

Saxton is linked by 120 direct, private phone lines and 10 leased Teletype wires to other brokerage firms, banks and fund managers throughout the country. A panel of switches on the desk in front of each trader enables him to talk on any line at the flick of a switch.

Before the market opens Mr. Rittereiser has compared notes with a score of other traders and brokers. A clerk has chalked Mr. Rittereiser's opening bid and asked quotes—the prices at which he is willing to buy or sell the stocks he trades—along with those of the other traders on the big trading board that wraps around one end of the room. Any trader in the firm can buy or sell any security the firm trades at

Please Turn to Page 25, Column 1

Market Hot Spot: Competitio Fierce in Over-the-Counter M

Continued From First Page

the price chalked on the board, so each trader must keep adjusting his quotes constantly.

At 10 a.m. Freddy Ritt smooths back his thick mane of prematurely gray hair, adjusts his black-rimmed "granny" glasses, snaps his bright blue suspenders nervously and lurches forward in his chair. The Saxton switchboards light up and trading begins.

Useful Trading

A successful market maker knows the stocks he trades and anticipates effects of changing market conditions or corporate news developments on their prices. He needs quick wits, a good memory, a strong stomach, a trading instinct and experience. "Eighty percent of this market is human emotion," says Freddy. "The four years I spent as an undercover detective for the New York City Police Department were the greatest experience I could have had as far as learning about human emotions. And since I couldn't write anything down, it also helped me develop the kind of memory that's essential in this business."

He won that undercover job at 21, only three months after joining the force, by breaking up a gang fight and arresting all 28 youngsters involved. "They had my partner and me surrounded," he recalls, "but I had the gun."

Now in the Saxton trading room at 10:05, Freddy Ritt is surrounded again. He doesn't stop talking for the first 10 minutes of trading. Flipping phone switches, he quotes prices and checks the competition. He calls price changes to the trading board. At the same time, he's shouting information to other Saxton traders and Teletype operators, but he can't keep up with the questions coming at him.

"What's Fushie, Fred [illegible]?" Freddy's Portsmouth. "Milwaukee's asking for Jumbo." "Holmex for Nashville [illegible]." Freddy: "I'm still asking for King."

As Freddy explains, two of the most volatile stocks he makes a market in, Federal National Mortgage Association (Fannie Mae) and King Resources, have opened sharply lower. Several others he handles, including Horizon Corp. and Data General, are slipping fast.

Wiping His Brow

For every trade he makes, Freddy Ritt gives out five to 10 price quotes to potential customers shopping for the best price, or to competitors checking his markets. It's chilly in the air-conditioned room, but by 10:15 he's wiping his brow. By 10:20 all 30 clerks, who operators and traders are shouting questions and quotes back and forth, jerking thumbs to okay a buy, waving off a trader to tell him to wait.

By 10:25 there's a wide spread among the 21 houses that make a market in Fannie Mae. Traders that have stock to sell are keeping their quotes high; Freddy and others who are short the stock, having sold borrowed shares in the hope of replacing them later at a cheaper price, are going lower.

A competitor catches Freddy with a low asking price on a stock that's rising. "I want to buy 1,000," says the trader. "Why don't you buy 100?" answers Freddy, who must sell at least that amount to anyone who takes his price. "Okay."

Freddy yells at the clerk on the trading board to raise his quote half a point, scribbles a sell order and answers the phone. Another trader catches him with a high bid on a different stock. He buys 100 and changes the quote. A few minutes later he's hit low again, but this time the rival tells him: "You don't have to, Freddy. If you'd rather not, just say so."

A Bid's a Bid

Freddy answers, "A bid's a bid. You just bought 100 at 14. Pleasure doing business with you." He drops the phone and shrugs. "He was trying to be a nice guy and let me get out of it, but you can't play favorites in this business. You make a market, you should not [illegible]

AND BUNKER RAMO CORP.

Dated,
Attorney for Offers and Post Office Address
To
Attorney(s) for
Dated,
Attorney
To
Attorney(s) for
Is hereby admitted.
Dated,

EXHIBIT A

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He makes a quick check of the rest of his prices, changing several. So far he has been concentrating mostly on Fannie Mae and Kin Resources, but now he keeps a closer watch on a dozen other active issues. By 11 he has found some competitors' prices attractive and traded a few thousand shares of stocks. He is coughing and slightly hoarse. "Anybody got any cough drops?" he yells. Someone throws a roll of fruit-flavored Life Savers onto his desk.

"Looks like time to make a good check on Fannie, she seems to be coming back," he says.

He keeps an eye on the tapes showing trades on the New York and American stock exchanges, but mostly he relies on his own instincts and experience to gauge the market. "This job is a lot like a football linebacker's," he explains. "You watch the way the guys play, the other positions are lining up. You figure out from their questions and answers who's buying, who's selling and who's shopping. Their actions tell you which way the next play's going."

Time for Lunch

A lunch cart is wheeled in. Most of the traders buy sandwiches and wolf them down at their desks. Freddy gets another cup of coffee. "I can't eat in the middle of all this. It gets my stomach upset," he says.

A Texas broker wants to buy 3,000 shares of a stock Freddy is quoting at 6⅛. "I'll sell you 1,000 at 6⅛ and I'll come whistling right back at you on the other 2,000," Freddy tells him. He calls a Canadian broker who he remembers was selling two days before, buys 2,000 at 6 and calls the Texan back to complete the trade.

But he doesn't just wait for calls. "You're out of your mind to do that," he says. "You have to pursue these guys the way a beagle chases a rabbit. Otherwise you end up a 60-year-old trader who hasn't made any money."

A bootblack takes Freddy's shoes, and, in stocking feet, Freddy pursues several small blocks for a bank and a couple of larger ones for a fund manager and a retail brokerage house.

Getting Hoarse

Calls are still coming in, and part of the time Freddy is talking on two phones at once. "Okay, you bought 300 Alden. Call me again. I can bid 14 for King. How many you want, couple of thousand? Okay, you bought 2,000 at 14 — The shouting continues, too. "Tell Jimmy I'll buy 500, but he can take the other 500 to his brother. Hey, come on, sit down, will you? How much did we pay for that Anheuser? Larry, up a quarter on Data General."

By 2:25 Freddy is hoarse. His voice keeps cracking. "The best I can go is 13¾ bid. Okay, thanks for trying to do business." At 2:30 he buys his fourth cup of coffee. As he sits down another trader stands up and shouts: "Hey, a guy says there's a rumor around that Nixon's gonna be impeached because of the Cambodia thing."

The announcement draws boos and jeers from other traders. "Who's gonna impeach him—Ted Kennedy?—Would they take Arthur Burns instead? I think you heard it wrong—It's Nixon's pooch tree that's in trouble."

"Hit the lights, somebody," yells Freddy. The phones are flashing again. "Red, you got 300 Stirling Homex there, write it," he tells an order clerk. "And check my position in Fannie."

Across the room another trader beats both fists on the desk, whirls and stalks away from his chair. "I've told that damn kid time and again," he growls. "I've told him and told him to watch his terminology. Well, he just called up and said 'I'm buying' and I really stuck him."

A young trader at another brokerage house has deviated from the accepted jargon of the trade once too often. "He calls and says, 'I'm buying, what's your quote?'" fumes the Saxton trader. "I give him another chance. I ask him, 'What did you say?' And he tells me again: 'I'm buying.' So I tell him: 'Okay you just bought 21,000 at 25. He comes back and says, 'But I only wanted 8,000.' 'You bought 21,000.' I tell him. I've warned him before about that."

It's a cardinal rule among traders that when they announce plans to buy they also specify the number of shares they want. If they don't, it means they will buy as many as are offered.

"That ought to help the kid remember," says another trader. "Yeah," adds another. "And when you hear who he's working for next week I'll let you know I've got something here I could lay on him."

Happy and Red-Eyed

A fund manager is on the phone to Freddy. "How's Analog look, Freddy? I own 3,000 shares. Can you take me out of part of it?"

"Sure, I can take 1,500 at 9½. Let me get right back to you on the rest." Two phone calls later, Freddy rings the fund manager back, buying the other 1,500 for 9⅛ even though he couldn't find anyone to resell it to. "But he'll remember that and come back, and I don't mind because I've made money on that stock today," Freddy says.

Freddy is raspy-voiced and red-eyed by 3:30 when the market closes. He flips through his pile of buy and sell orders, checks his "position"—the inventory of stocks he holds or is short in—and jots down his closing quotes.

He has traded a total of 46,100 shares in 141 individual trades ranging from three shares to a block of 6,000. A year ago he might have written 250 or 300 orders. But he has made money for the firms—and for himself. "I'll go home happy," he says. Downstairs he buys a box of medicated throat discs and eats them like peanuts.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN, & CO.,

Plaintiff,

-against-

SECURITIES & EXCHANGE COMMISSION,
et al.,

Defendants
- X

74 Civil 2792

AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS OF DEFENDANT NATIONAL QUOTATION BUREAU, INC. AND REPLY AFFIDAVIT IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION.

TPG

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK.

SAMUEL H. SLOAN, Being duly sworn, deposes and says:

1. A number of statements made in the affidavits of David Burnett are incorrect. To begin with, paragraph 3 of the affidavit of David Burnett in support of a motion to dismiss states that I made no payment of my subscription bill from April through August 15, 1973. This is not true. The fact is that I paid the sum of $3,073.57 to the NATIONAL QUOTATION BUREAU ("NQB") between April, 1973 and August, 1973. A copy of a cancelled check showing a payment in the sum of $2,073.57 on June 4, 1973 is attached hereto and marked Exhibit A.

2. Next, paragraph 5 of the affidavit of David Burnett in opposition to my motion for a preliminary injunction states that I did not submit listings for publication after December 30, 1974. Again, this is untrue. A copy of Mr. Burnett's own affidavit showing listings scheduled for publication after December 30, 1974, is attached hereto

and marked Exhibit B. I believe that the facts and figures presented in this prior affidavit are substantially correct.

3. Furthermore, an affidavit of Jerome Selvers claims that additional quotations were submitted on my behalf after December 30, 1974. A copy of this affidavit is attached hereto and marked Exhibit C. However, I deny the truth of many of the statements made in this affidavit and include it only for the limited purpose of establishing that quotations were submitted on my behalf after December 30, 1974.

4. The relevant facts are as follows: On December 30, 1974, after Judge Ward signed the temporary restraining order, I caught a scheduled 8:00 P.M. flight for Iceland (which actually left at about 9:30 P.M.). I arrived back in New York at about 4:00 A.M. on January 8, 1975.

5. Prior to leaving for Iceland, I arranged to have a friend submit listings by telephone to the NQB while I was away. The listings were supposed to be blank without a bid or an asked quotation. The reason that I wanted this done was that if a listing for a particular security does not appear in the pink sheets for a certain number of days, the NQB will not publish a listing for that security unless a new Form 211 is submitted. Thus, I wanted to keep my listings active while I was away.

6. When I came back, I learned that the NQB had refused to accept my listings while I was away. On January 8, 1975, I personally called the NQB and submitted a listing by telephone for Triex International Corp. I examined the pink sheets the next day and observed that the NQB had not published my listing. After attempting without success to resolve

the matter with the NQB, I submitted my request for a temporary restraining order and order to show cause to this court.

7. After Judge Griesa signed the order to show cause, I spoke to David Burnett and other employees of the NQB several times. The first of these conversations took place on January 10, 1975, when I went to serve the order to show cause on the NQB. Mr. George Brandt of Rogers & Wells had previously told me that I could serve the order on the NQB directly rather than travel uptown to the offices of Rogers & Wells. In a brief conversation with Mr. Burnett just prior to 5:00 P.M. on January 10, 1975, I was told by Mr. Burnett that if I wanted to go back in the pink sheets that I should submit listing cards and the NQB would decide whether or not to publish my listings.

8. On Monday, January 13, 1975, I submitted ten quotation cards to the listing department of the NQB on the 9th floor at 116 Nassau Street, New York, N.Y. A clerk there who was obviously acting on special instructions asked me to come upstairs with her to the 10th floor. I did, in fact, go upstairs with her and observed her hand my ten listing cards to Mr. Burnett. Without looking at the cards, Mr. Burnett told me that the NQB, on advise of counsel, was not going to accept any listings from me.

9. The next day I submitted ten more quotation cards with the same result. I attempted to argue the point with Mr. Burnett by stating that according to the S.E.C.'s interpretation of its own Rule 15c2-11, the rule only excluded the publication of actual bid and asked quotations. Since I had not attempted to submit any bid or asked quotations but merely listings "in name only," I could obviously not be in violation of Rule 15c2-

11. Mr. Burnett said that he agreed with me and he felt that the NQB should publish my listings but that Rogers & Wells had nevertheless advised the NQB not do so.

10. On either January 13 or 14, 1975, I called Rogers & Wells and discussed the matter at length with George Brandt. Mr. Brandt stated that in his opinion a quotation could be deemed a listing in name only without a bid or an asked quotation even though the S.E.C. may have made, in a prior situation, a ruling to the contrary. I discussed such a ruling with Mr. Brandt, a copy of which is attached hereto and marked Exhibit D. Nevertheless, Mr. Brandt stated that in his opinion, due to the broad language of Judge Wards order, the NQB would be risking a contempt proceeding by accepting any listings from me and, as a result, he had advised the NQB not to accept my listings.

11. After speaking to Mr. Brandt, I went to the offices of the S.E.C. and spoke to Mr. Selvers, the trial attorney who had represented the S.E.C. before Judge Ward. I asked Mr. Selvers for a specific ruling that, in the opinion of the S.E.C., I could submit listings "in name only" without violating Rule 15c2-11 or Judge Wards order. Mr. Selvers suggested that I write a letter to his superior, Mr. Nortman.

12. Although frustrated in my efforts to obtain the listing priviledges for which I had paid the sum of $436.32 to the NQB, I continued to submit quotation cards in the hope that the NQB would let me back in the pink sheets. Finally, I submitted a quotation card for a listing "in name only" of a security which had previously been suspended from trading by the S.E.C. named American Telephone & Telegraph ("AT&T"). A copy of the S.E.C. release announcing the suspension AT&T is attached hereto and

marked Exhibit E. At the same time I submitted quotation cards for U.S. Steel, Anheuser-Busch, American Express, and Anglo-American Gold. I selected the latter because it is a foreign issuer and therefore exempt from Rule 15c2-11 and from all other so-called federal securities laws.

13. Miraculously, on January 15, 1975, the NQB accepted a listing in those securities and since that time the NQB has treated my listings in a fairly normal manner. I know of no reason to account for this change in policy other than to assume that Rogers & Wells changed its mind. (In another motion paper, I express the belief that Mr. Brandt may, for strictly personal reasons, desire to interfere with my business activities.)

14. Nevertheless, the relief I am requesting is decidedly not moot. The NQB now wants me to submit new Forms 211 on all the same securities for which I submitted Forms 211 in December, 1974 if I want to get back in the pink sheets in those securities. In December, 1974, I submitted Forms 211 on a total of 374 securities. An example of one of the submitted forms is attached hereto and marked Exhibit F. It appears from Exhibit A that only 294 of these forms were both necessary and acceptable. Of the remaining 68 securities, 17 were for issuers which were then currently under suspension by the S.E.C. Consistant with my contention that a suspension of trading by the S.E.C. is unconstitutional, I attempted to list in the pink sheets all 17 securities which were then suspended. Although the NQB has never discussed the matter with me, Ira Spindler of the S.E.C. told me that the NQB had told him that the NQB would not publish my name under any suspended securities.

15. I believe that most of the remaining 51 securities were securities then currently listed in the pink sheets so that the submission

of a Form 211 was unnecessary.

16. The court may be wondering why I would engage in a course of conduct which would obviously bring retaliatory action by the S.E.C. Mr. Selvers apparently believed I was doing so in order to set up a court confrontation which would immediately test the validity of Rule 15c2-11. This is not actually correct. The truth is that I was only in it for the money. In November, 1972 I was a market maker in the shares of Triex International Corp. ("Triex"). In connection with my market making activities in Triex, I sold 200 shares to Thompson & McKinnon at 8 5/8, 300 shares to Havenfield Corp. at 10, 100 shares to Gilligan Will & Co. at 9 1/4 and 200 shares to Ladenberg, Thalman at 9. I also sold an additional 400 shares to small brokers who are now out of business. Furthermore, I bought 800 shares from brokers who are also now out of business. This left me with a short position of 400 shares of Triex.

17. After triex was suspended by the S.E.C., none of the brokers involved would accept or make delivery. Thus, my fail to receive and deliver position was frozen and I could not receive or deliver any stock. When the trading suspension was lifted, Triex did not resume trading and, for that reason, none of my outstanding contracts were settled. Also, after inquiring around Wall Street, I was unable to find any Triex shares for sale on the market.

18. The total dollar value of my fails to deliver, including those representing sales to brokers now out of business, came to exactly $11,000.00. Since this would represent money in my pocket if I could buy back the Triex shares at a nominal price, I explored ways to cover my short position. In February, 1974 I went to Miami, Florida and spoke to

Bob Slatko and his associate Harvey Bernstein, the new president of Triex. At that time, I learned from the previous president of Triex that Slatko and Bernstein had been given control of Triex in September, 1973 by its previous owners who apparently did not know of Mr. Slatkos' background. (See S.E.C. v. Century Investment Transfer Co. CCH Fed. Sec. Law Rep. ¶93,232 (1971-72 binder.)).

19. When speaking to Mr. Slatko and Mr. Bernstein, I offered to, in effect, invest $3,000 into Triex in return for which I would be given a block of stock and control of the company. My plan was to obtain stock which I could use to make delivery on my outstanding contracts so as to get my $11,000. Mr. Slatko agreed readily to my proposal. Nevertheless, he stalled on actually consummating the deal until August, 1974, when Mr. Bernstein called me on the telephone and offered to, in effect, sell me control of Triex for $20,000. I rejected the offer.

20. Following this lack of success, I embarked on a different approach which was to put Triex back in the pink sheets so as to enable me to cover my short position. I submitted a Form 211 to the NQB and, as a result, received a surprising letter from Slatko, a copy of which was attached as an exhibit to my motion for leave to file an amended complaint.

21. After submitting my Form 211 for Triex, I spoke to Ira Spindler of the S.E.C. who told me that the S.E.C. had no objection to having my name listed under Triex as long as it was listed without a bid or an asked quotation. Mr. Spindler told me, however, that the NQB had a rule which prohibited the submission of initial listings without an initial quotation.

22. In December, 1974, I spoke personally to Mr. Burnett of the NQB in his office several times with regard to my desire to list Triex and other securities in the pink sheets. I told Mr. Burnett that I was going to try to list perhaps as many as 500 or 1,000 securities in the pink sheets during the last two weeks of 1974 if time permitted it. I explained that the reason that I wanted to submit these listings at this particular time was to take advantage of tax selling which traditionally occurs at the end of the year. I also explained to Mr. Burnett that I had a particular interest in Triex because of my fail to deliver position which was valued at $11,000.00.

23. Mr. Burnett told me that because of my special situation with regard to Triex he would require me to submit a Form 211 to the NQB indicating an actual bid price but he would nevertheless permit to go in the pink sheets blank or without a bid or an asked quotation. Subsequently, I did go into the pink sheets in Triex on that basis. However, after listing my name in the pink sheets without a bid or an asked quotation and without buying any Triex shares to cover my short position, I decided to submit a quotation of 1/4 bid which was the quotation I had indicated an intention to publish on the Form 211 I submitted to the NQB with respect to Triex. By so doing I also assured the publication of my name in the National Stock Summary under Triex.

24. Since January 15, 1975, the date the NQB started to publish my listings again, I have submitted a listing for Triex almost every day. I have also submitted listings for other securities which are not presently in the pink sheets but which were listed under my name during the last two

weeks of 1974. The NQB has not published my listings but has sent back the quotation cards with the words "Form 211 Required" stamped across them. A copy of several such cards are attached hereto and marked Exhibit G.

25. In response, I have in fact submitted a Form 211 for Triex. However, this form was rejected by the NQB. A copy of the rejected form is attached hereto and marked Exhibit H. It is apparent that this form was rejected because I failed to submit a bid or an asked quotation.

26. On February 3, 1975, I spoke to Mr. Burnett and asked him if I could again list Triex without submitting an initial quotation. Mr. Burnett denied my request and stated that his reason for so doing was that the previous time when he had granted the same request I had ultimately submitted the price of 1/4 bid. Mr. Burnett told me that if I wanted to argue the point further I should call counsel for the NQB, Rogers& Wells.

27. I did, in fact, call Rogers & Wells and I spoke to Mr. Koegel. (Mr. Brandt was unavailable). Mr. Koegel told me that he would speak to Mr. Burnett concerning this matter. Two days later I called Mr. Koegel again and he advised me that he had discussed the matter with Mr. Burnett with the result that there was no change in the position of the NQB, and that I would be required to submit a Form 211 indicating a bid or an asked quotation if I wanted to be listed in the pink sheets for Triex.

28. For all of these reasons, the relief requested is not moot even though the circumstances have changed somewhat since I submitted my original order to show cause. To begin with, the NQB has unequivocally refused to list my name under securities currently suspended from trading by the S.E.C. Next, the NQB will not permit me to submit new listings

for any other securities unless I submit a new Form 211. Finally, even if I do submit a Form 211, the NQB will not permit me to list my name in the pink sheets unless I submit an initial quotation. Although the NQB claims that to do so would be to permit me to violate its own internal rule, the fact is that the rule in question has not been published or posted anywhere and the only time a subscriber becomes aware of this "rule" is when a Form 211 is rejected by the NQB on the grounds of this so-called "rule".

29. It is clear that I will suffer irreparable harm if this motion is not granted. At the same time the NQB will suffer no harm whatsoever and, in fact, will benefit if my motion for injunctive relief is granted. I have discussed Rule 15c2-11 with Mr. Burnett and other officers of the NQB and it is clear to me that NQB dislikes rule 15c2-11 as much as I do. The reason for this should be apparent. The NQB derives its income almost entirely from listing fees paid by its subscribers. The rate which the NQB charges for its listings is $25.00 per five listings per month plus sales tax plus a small additional $10.00 monthly charge for the initial ten listings. Each page of the pink sheets contains an average of 155 listing. (Part of the cover and part of a sample page of the pink sheets is attached hereto and marked Exhibit I). At present, the pink sheets contain an average of 160 pages. About one page is usually wasted in the cover and last page. Thus, each issue of the pink sheets contains 155 X 159 or 24,645 listings. At the base rate of $5.00 per listing per month, the NQB derives an estimated $123,225 in subscription fees monthly from listings alone. However, before Rule 15c2-11 came into effect and before the advent of NASDAQ, the average issue of the pink

sheets contained about 300 pages. Simple arithmetic indicates that the revenues received by the NQB have decreased by more than $100,000 per month since that time. It must be remembered that while market prices have dropped, the overall volume of over-the-counter trading has increased during the relevant period.

30. For this reason, the NQB would actually like to see me win this lawsuit. It is obvious that if the Securities Exchange Act of 1934 were declared to be unconstitutional, the NASDAQ system would cease to exist. The simple fact is that few brokers would be willing to bear the cost of NASDAQ if NASDAQ were not backed by the regulatory authorities. On the other hand, the NQB, which dates its existance back to 1913 or thereabouts, would stay in business.

31. At one of my meetings in Mr. Burnett's office, he informed me that Congress passed legislation in 1963 which would have enabled the nationalization of the NQB. According to Mr. Burnett, Congress backed down when the then owner of the NQB made it clear that he would discontinue business rather than be nationalized.

32. By refusing to permit me to go back into the pink sheets in Triex without submittin an initial quotation, the NQB is placing me in a special kind of jeopardy. Although I succeeded in purchasing 200 shares of Triex at 1/4, I still need to buy at least 600 more shares so that I can deliver these shares and presumably receive payment in the amount of $5,525. (I already delivered 100 shares to Havenfield Corp. and 100 shares to Gilligan, Will & Co.). However, if I were to comply with the rule of the NQB, the S.E.C. would undoubtedly take the position that I was in violation of Rule 15c2-11 and in contempt of Judge Ward's order. Thus, I must

consider the question of whether it is worth $5,525.00 to be held in contempt of court. In order to do this, I must calculate the probability of Judge Ward's injunctive order being held up on appeal as against the probability that I will actually be able to buy the needed 600 shares of Triex, to make delivery, and to receive payment therefore. All of this would be avoided if the NQB would let me list Triex in the pink sheets without an initial quotation.

33. The same is true of Franklin New York Corp. (the parent company of Franklin National Bank which is now being liquidated by the FDIC). In that situation, during the last week in 1974, I bought 1,000 shares at the price of 1¢ from A.G. Becker & Co. and sold the same 1,000 shares to Sherman, Fitzpatrick & Co. at 10¢ thereby realizing a profit of $90.00. However, A.G. Becker & Co. cannot deliver the shares it sold to me and Sherman, Fitzpatrick & Co. would like to buy me in. However, there is no market in Franklin New York Corp. because the NQB did not publish my listings from December 30, 1974 until January 15, 1975. Therefore, the situation presumably will remain in limbo indefinitely unless and until I or another broker can get back in the pink sheets in Franklin New York Corp. Meanwhile, A.G. Becker & Co. has been calling me almost every day in an effort to induce me to break the trade and has offered to pay me $90.00 to do so. At the same time, Sherman, Fitzpatrick & Co. has thus far refused to break the trade and is demanding delivery of the stock.

34. I know of similar situations involving much larger sums of money. For example, according to the Wall Street Journal, Salomon Bros. refused to accept delivery of $8,000,000 worth of stock in Equity

Funding Corp. after trading in Equity Funding Corp. was suspended by the S.E.C. (That suspension is still in effect). However, I was told by the New York Stock Exchange that Salomon Bros. finally did take delivery and make payment after Salomon Bros. was threatened by the New York Stock Exchange with being suspended from trading on that exchange.

35. In the situation before this court, I have suffered prejudice because the NQB refused to publish my listings from December 30, 1974 until January 15, 1975. If my listings had been published during that interval this problem would not have arisen because I would have been able to continue to submit quotation cards at regular intervals. However, the NQB arbitrarily refused to accept my listings during that period and now, apparently relying on Rule 15c2-11 subsection (b)(3), the NQB will not now let me back in the pink sheets on any of the 294 securities for which I previously submitted Forms 211 unless I submit new Forms 211 and new initial quotations.

36. With regard to the motion to dismiss, I will state that although it might be argued that the NASDAQ system can be said to compete with the NQB, the fact is that NASDAQ is a fundamentally different kind of quotations medium. To say that NASDAQ competes with the NQB would be analogous to saying that AT & T competes with Western Union or the U.S. Postal Service. Furthermore, according to exhibits submitted by the NASD in support of a motion to dismiss, there are 3,000 securities currently listed on NASDAQ. On the other hand, about 10,000 securities are listed daily in the pink sheets. (I obtained an estimate of this figure by multiplying the average number of pages in the pink sheets (159) by the number of securities on the average page I sampled (69) to reach 159 X 69 =

10,971. Undoubtedly, the NQB can provide more accurate figures. According to page 4 of an exhibit offered by the NASD entitled "NASDAQ, and the Listing Dilemma" and to other published figures, there were approximately 10,000 securities actively quoted in the pink sheets.) Thus, the NQB can be said to have a monopoly on the listings of approximately 7,000 securities which are not listed on NASDAQ.

37. A subscriber to the pink sheets must pay the sum of $360 plus tax for one set of pink sheets delivered daily plus ten listings. Subscribers who desire additional listings must pay at the rate of $25.00 per five listings per month. Thus, a subscriber to 100 listings pays $510 per month, a subscriber to 200 listings pays $1010 per month, and a subscriber to 500 listings pays $2510 per month. Subscription fees are payable six months in advance. After the initial ten listings, there are no discounts available for large volume listings. On several occasions, I have attempted to obtain such volume discounts. I contend that this rate structure is unfair. For example, a major brokerage firm such as Harris, Upham & Co. with about 100 branch offices probably paid less for its subscription to the pink sheets than I paid when I was a subscriber to 100 listings.

38. Furthermore, although I ultimately paid the bill to the NQB in the amount of $1,755.87, I still contest its correctness. The NQB never made any effort to demonstrate the correctness of this billing although I requested that it do so on numerous occasions. The simple fact is that I paid the bill to the NQB as the only way to get back into the pink sheets.

WHEREFORE, deponent respectfully prays that this court grant his motion for a preliminary injunction requiring defendant National Quotation

Bureau, Inc. to list his name in the pink sheets under any security and deny the motion of defendant National Quotation Bureau, Inc. to dismiss the complaint.

Samuel H. Sloan

SAMUEL H. SLOAN

Sworn to before me this 10th

day of February, 1975

Robt. E. Fishbein

ROBERTA E. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4518842
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976

EXHIBIT 1

A238

SAMUEL H. SLOANE & CO. 732

June 4 1973 10-210 1

PAY TO THE ORDER OF National Quotation Bureau $ 2073.57

TWO THOUSAND SEVENTY THREE DOLS 57 CTS DOLLARS

FIRST NATIONAL CITY BANK
55 WALL STREET
NEW YORK, N. Y. 10015

Samuel H. Sloan

⑈000732⑈ ⑆0210⑈0008⑆ 0931?346⑈ ⑈0000207357⑈

RUDCO CHECKS 801

⑆73405 6051

MARINE MIDLAND GRACE TRUST COMPANY
PAY TO THE ORDER OF
NEW YORK
JUN

15-7261 4-2

AFFIDAVIT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

DAVID M. BURNETT, being duly sworn, deposes and says:

1. I am Executive Vice-President of the National Quotation Bureau, Inc. at 116 Nassau Street, New York, New York 10038. The National Quotation Bureau, Inc. publishes the National Daily Quotation Service (the "Pink Sheets"), which is a daily listing of bid and asked prices in securities traded Over-the-Counter by brokerage firms.

2. The National Quotation Bureau has approved the following numbers of Forms 211 submitted by Samuel H. Sloan & Company ("Sloan") for listing in the Pink Sheets. In all cases where a security was not previously listed, copies of completed Forms 211 submitted by Sloan were transmitted to the New York Regional Office of the Securities and Exchange Commission at least 48 hours prior to listing.

(a) On Monday, December 23, 1974, 39 Forms 211 were accepted for listing for inclusion in the Pink Sheets of that date; on Tuesday, December 24, 1974, 31 Forms 211 were approved for listing for inclusion in the Pink Sheets of that date; on Thursday, December 26, 1974, 47 Forms 211 were approved for listing for inclusion in the Pink Sheets of that date; and on Friday, December 27, 1974, 47 Forms 211 were approved for listing for inclusion in the Pink Sheets of that date.

(b) As of December 27, 1974, there were 107 Forms 211 pending for approval for today, December 30, 1974.

(c) As of December 27, 1974, there were 20 Forms 211 which were pending for listing in the Pink Sheets of December 31, 1974; and on December 27, 1974, there were three Forms 211 which were pending for listing in the Pink Sheets of January 2, 1975.

3. Samuel H. Sloan & Company submitted an additional 51 Forms 211 for the listing of securities, which Forms 211 were not sent to the Securities and Exchange Commission since the issues were already listed in Pink Sheets.

4. Samuel H. Sloan & Company appeared in the services of Pink Sheets on the following dates in the following numbers of securities, to wit: On December 23, 1974, Sloan appeared in 77 different issues; on December 24, 1974, Sloan appeared in 39 different issues; on December 26, 1974, Sloan appeared in 60 different issues; and on December 27, 1974, Sloan appeared in 116 different issues.

5. Since December 18, 1974, the National Quotation Bureau has received approximately 350 Forms 211, each for a different security, from Samuel H. Sloan & Company.

(David M. Burnett

JOHN M. WALSH
Notary Public, State of New York
No. 41-4501037
Qualified in Queens County
Commission Expires March 30, 1975

Sworn to before me this

30th day of December, 1974

Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, - against - SAMUEL H. SLOAN, Individually and d/b/a SAMUEL H. SLOAN Defendants.	74 Civil 5729 (RJW) AFFIDAVIT IN SUPPORT OF EXTENSION OF TEMPORARY RESTRAINING ORDER

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JEROME M. SELVERS, being duly sworn, deposes and says:

1. I am employed as an attorney by the U.S. Securities and Exchange Commission ("Commission"), Plaintiff in the above-entitled action in its New York Regional Office.

2. I make this affidavit in support of the application of the Commission for an extension of the temporary restraining order. This affidavit is based upon correspondence and other documents of defendant Samuel H. Sloan & Co. ("Sloan & Co."), statements made to or in my presence by Samuel H. Sloan ("Sloan"), information received from the National Quotation Bureau ("NQB"), and information contained in the official files of the Commission upon information and belief.

3. On December 30, 1974 the Honorable Robert J. Ward, U.S. District Judge for the Southern District of New York, signed

a temporary restraining order, restraining Sloan & Co. and Sloan from further violations of the examination provisions of Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78q(a) and Rule 17a-4 promulgated thereunder, 17 C.F.R. 240.17a-4 and from further violations of the provisions for initiating over-the-counter quotations, Section 15(c)(2) of the Exchange Act, 15 U.S.C. 78o(c)(2) and Rule 15c2-11, 17 C.F.R. 240.15c2-11.

4. The Court further ordered Sloan to "permit immediate examination in an easily accessible place" of his books and records as well as not to remove, destroy or alter those books and records.

5. Defendants Sloan and Sloan & Co. were ordered to show cause before Judge Ward on January 8, 1975 at 2:15 p.m. in Room 519 of the U.S. Courthouse, Foley Square, New York as Sloan indicated that he was en route to Iceland and would not return until the latest possible date for arguments. Mr. Sloan indicated to the Court that his books and records were in his locked apartment and not in the custody of any person. (Record, p. 25). Moreover, Sloan indicated in response to the Court that there was no one on the premises.

6. The Court suggested that arrangements be made whereby the Commission could inspect Sloan's books and records pursuant to the Court Order. (Record, p. 29, 38). Upon conclusion of argument, Sloan was immediately served with the Temporary Restraining Order, and William Nortman, Assistant Regional Administrator of the New York Regional Office, asked Sloan in

the outer office of Judge Ward's Chambers, if such an examination could be arranged. Sloan flatly refused.

7. On Tuesday, December 31, 1974 I spoke with Mr. Walsh of the NQB who advised me that someone was attempting on Sloan's behalf to list stocks in the Pink Sheets in violation of Rule 15c2-11.

8. I called the telephone number of Sloan's residence (583-8765) which apparently is also an office number, to determine if the firm was doing business. An individual answered the telephone, "Sloan & Co." I advised this individual that the Court had issued a temporary restraining order, restraining Sloan and Sloan & Co. and their agents, employees, servants, assigns, etc. from violating Rule 15c2-11. This individual indicated that he had last spoken to Sloan at approximately 4:30 - 5:00 p.m. the previous day (Monday, December 30, 1974) and Sloan had told him to carry on business as usual.

9. I asked this individual if Sloan & Co.'s books and records were available for immediate inspection as ordered by this Court. I was advised that this individual knew nothing of the firm's books and records. Subsequently, Ira B. Spindler, a Financial Analyst in the Branch of Market Surveillance, of the plaintiffs New York Regional Office, served this individual with a temporary restraining order.

10. On Friday, January 3, 1975 I called Sloan & Co. at 583-8565 and again spoke to this individual who had by this time been identified as Hank Lanson who again answered the telephone

"Sloan & Co."

11. Clearly, Sloan misrepresented the availability of his books and records when he stated that same were in a locked apartment with no one present to allow an inspection. As a result, as of this date, the Commission has been unable to examine Sloan's books and records to determine the extent of the violations.

12. It is therefore imperative at this point that the temporary restraining order be extended for an additional 10 days and that the matter be set down as quickly as possible on the plaintiff's request for a preliminary injunction.

JEROME M. SELVERS

Sworn to before me this
8th day of January, 1975

NOTARY PUBLIC

HENRY WONG
Notary Public, State of New York
No. 31 4[illegible]135
Qualified in [illegible] County
Commission Expires March 30, 1975

A245

that it will not recommend any action to the Commission if the merger between Butler and Transport is effected under Del. Sec. 253 without distribution to Transport security holders of an information statement pursuant to Rule 14c-2. If you have any questions with respect to the above, please do not hesitate to telephone the undersigned.

[¶ 79,693] Rothschild Securities Corporation.

Securities and Exchange Commission, Division of Market Regulation, December 27, 1973. (Available January 27, 1974.) Correspondence in full text.

Securities Exchange Act—Rule 15c2-11(a)(4)—Quotations Rule—Broker-Dealer Exemption Request—Issuer Information Necessary.—A broker-dealer wishing to publish a quotation in an inter-dealer quotation system must supply specified information to the system under Rule 15c2-11(a)(4), and it is not entitled to a exemption from this requirement merely on the ground that the necessary information is not available. The broker-dealer desired to close out a short position in the stock of a corporation which has been suspended from trading because of questions as to the reliability of its statement of operations and financial condition. Although the suspension had terminated prior to the request to resume quotations, the Rule operated to prohibit resumption of quotations until the information concerning the affairs of the issuer has been made available. As a result, the broker-dealer may only submit "offer wanted," "bid wanted," or "name only" insertions in an inter-dealer quotations system.

See ¶ 25,116, "Exchange Act—Over-the-Counter Markets" division, Volume 2.

[SEC Staff Reply]

This is in response to your letter of December 3, 1973, in which you request an exemption from the requirements of Rule 15c2-11 under the Securities Exchange Act of 1934 (the "Act") on behalf of Rothschild Securities Corporation ("Rothschild") with regard to the insertion of quotations for the securiites of First Leisure Corporation ("FLC") in an interdealer quotation system.

On September 28, 1972, the Commission suspended trading in the stock of FLC because of questions concerning the accuracy and reliability of FLC's statement of operations and financial condition and because of the absence of reliable, current information concerning the method of operation and financial condition of FLC's only operating subsidiary, Goldstein, Samuelson, Inc., a commodities put and call option dealer. This trading suspension terminated on November 1, 1973.

You state that Rothschild has a short position in the common stock of FLC and now wishes to close out this position. You indicate that Rothschild has been unable to provide the National Quotation Bureau ("NQB") with the information required by subparagraph (a)(4) of Rule 15c2-11 in order to enter a bid in the NQB's "Pink Sheets", and you therefore request an exemption from Rule 15c2-11.

In the release announcing the termination of the suspension of FLC, the Commission alerted broker-dealers to the fact that pursuant to Rule 15c2-11 under the Act no quotation could be entered unless and until a broker-dealer strictly complied with all provisions of the Rule. As you know, Rule 15c2-11 requires a broker or dealer who submits or publishes a quotation at a specific bid or asked price to have certain information in his records, absent an exemption from the provisions of the rule, and to submit this information to the inter-dealer quotation system at least two days before the submission or publication of the quotation. One of the basic purposes underlying the adoption of Rule 15c2-11 was to complement the Commission's suspension power under Section 15(c)(5) of the Act. Thus, when the Commission suspends trading in the securities of a particular company, it is with full knowledge that Rule 15c2-11 will prohibit the resumption of quotations in an inter-dealer quotation system until the specified information concerning the affairs of the company has been made available. Since an exemption in the circumstances you have presented would be specifically contrary to the regulatory scheme, and since you have not presented any policy reasons for such an exemption, we are not in a position to recommend that the Commission grant your request.

You should note, however, that Rothschild may publish "offer wanted", "bid wanted", or "name only" insertions since these are not considered to be quotations

EXHIBIT D

for purposes of Rule 15c2-11. You may also wish to consider other methods of closing out your open short position other than pursuant to transactions that may result through the above mentioned insertions in the NQB's "Pink Sheets". You should consider the antifraud provisions of the Act carefully, however, with respect to any transactions in FLC securities.

[Letter of Inquiry]

The Securities & Exchange Commission recently lifted a trading ban in the common stock of First Leisure Corp. Rothschild Securities Corporation has a small short position in the security and would like to close out the contracts. However, a listing on the National Pink Sheets can not be obtained without submission of form 211. Rothschild Securities Corporation has submitted such form but can not find adequate information about the company to have it approved for listing.

I am hereby requesting that you exempt the securities of First Leisure Corp. from Rule 15C211 in order for us to close out the open contracts in that security.

Thank you.

[¶ 79,694] Independent Investor Protective League.

Securities and Exchange Commission, Division of Corporation Finance, November 23, 1973. (Available December 24, 1973.) Correspondence in full text.

Securities Exchange Act—Section 14(d)(4)—Tender Offer—Recommendations to Investors Subject to Regulation.—Recommendations to members of an investor protective league relating to a tender offer are subject to Section 14(d)(4) which governs solicitations or recommendations to holders of securities. Upon a factual determination that the recommendation does not involve the solicitation of a proxy, the Commission's proxy rules do not apply. Although all communications to shareholders concerning securities transactions are subject to antifraud provisions, the application of federal laws to other securities transactions would depend on an analysis of all the surrounding facts.

See ¶ 24,284, "Exchange Act—Proxies" division, Volume 2.

Securities Exchange Act—Section 14(a)—Proxy Rules—Solicitations Made Without Compliance.—If a solicitation is made in violation of the Commission's proxy rules, the parties involved are normally informed of their responsibilities under the rules. If the parties then refuse to comply, the staff will consider whether it is appropriate to recommend that the Commission take enforcement action.

See ¶ 24,001, "Exchange Act—Proxies" division, Volume 2.

[SEC Staff Reply]

This is in response to your letter of October 17, 1973 in which you request clarification of the application of the Commission's rules and regulations to the activities of investor protective committees.

Your first question concerns the applicability of the federal securities laws to recommendations by your organization to its members in connection with tender offers, exchange offers or any other securities transactions. In general, as long as, such recommendations do not involve in any way the solicitation of a proxy with respect to the transaction the Commission's proxy rules would not apply to the sending of the recommendation. However, the determination of whether such a recommendation involves a proxy solicitation is a factual one and can be made only on a case by case basis pursuant to the facts involved in a particular situation.

In addition, any communication sent to the shareholders involving a securities transaction would be subject to the antifraud provisions of the acts administered by the Commission. Recommendations dealing with exchange offers may be subject to the provisions of the Investment Advisers Act of 1940, as well as, the antifraud provisions. However, Section 14(d) of the Securities Exchange Act of 1934 and Rule 14(d)(4) thereunder would be applicable to a recommendation relating to a tender offer. Application of the federal securities laws to other securities transactions would of course depend on the exact nature of the transaction involved and could only be commented upon after consideration of all the facts surrounding the transaction.

Your second question deals with the staff's response to solicitations made without compliance with the proxy rules. When solicitations made in violation of the Com-

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subsequently

alert to the
the Exchange Act,
interpretation may be
complied with
broker or dealer has
he has complied with
any quotation but immediate-
curities and Exchange Commis-
nt in Washington, D. C. If any
as to what is required by Rule
om entering quotations relating
until such time as he has fam-
e and is certain that all of
If any broker or dealer enters
lation of said rule, the Com-
for prompt enforcement

CT OF 1934
20, 1974

ommission has ordered the
oceedings under the Securi-
olving Klee & Company, Inc.,
; Jay Walter Klee, President;
; and Frank Allan Hasman,
irector.

legations of the Commis-
lated the net capital, book-
reporting and broker-
uirements of the Federal

ke evidence on the staff
an opportunity to offer
hearing is to determine
f so, whether any action
or appropriate in the pub-

OF 1934
1974

1/November 12, 1974.

F 1934
974

/November 21, 1974.

SECURITIES EXCHANGE ACT OF 1934
Release No. 11111/November 20, 1974

The Securities and Exchange Commission announced pursuant to Sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934 ("Exchange Act") the temporary suspension of exchange and over-the-counter trading in all securities of American Telephone & Telegraph Co. ("A.T. & T."), a New York corporation located in New York, commencing at 3:00 p.m. (EST) on November 20, 1974 and terminating at 10:00 a.m. (EST) on November 21, 1974.

The suspension of A.T.&T. was initiated pending an announcement.

The Commission cautions broker-dealers, shareholders and prospective purchasers that they should consider carefully the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the suspension, no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Securities and Exchange Commission, Division of Enforcement in Washington, D. C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

HOLDING COMPANY ACT

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 18658/November 15, 1974

In the Matter of

OHIO POWER COMPANY
2 Broadway
New York, New York 10004

(70-5549)

NOTICE OF PROPOSED ISSUE AND SALE OF PREFERRED STOCK BY SUBSIDIARY COMPANY AND REQUEST FOR EXCEPTION FROM COMPETITIVE BIDDING

NOTICE IS HEREBY GIVEN that Ohio Power Company ("Ohio"), an electric utility subsidiary company of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed an application-dec an amendment thereto, with this Commission he Public Utility Holding Company Act of 1 designating Sections 6(b) and 12(c) of the Ac 50(a)(5) and 100(a) promulgated thereunder to the proposed transactions. All interested p ferred to the application-declaration, as amen is summarized below, for a complete stateme posed transactions.

Ohio proposes to issue and sell up to 300,00 new series of its cumulative preferred stock, per share ("stock"). Ohio proposes that the stock, the terms of a sinking fund and optio prices, the exact number of shares of the sto dividend rate on the stock to be sold will be by negotiation, as explained further below.

Ohio requests an exception from the compet requirements of Rule 50 under the Act pursu tion (a)(5) thereof. As reasons for the reque tion, Ohio states that recent events tend to e is neither sufficient market or underwriter c port competing underwriters' offers for a su of utility company preferred stock. It is fur that negotiated sales and private placements as opposed to competitive bidding, permit l changes in the amount and/or timing of the stock offering, such changes sometimes beir market conditions.

In light of such circumstances and market c requests authority to discuss a public offeri with prospective underwriters. Upon the co discussions, Ohio proposes to select a finan ment which, in the view of Ohio, will resul the stock on reasonable terms.

Ohio states that during the course of negot stock, it may become necessary to make p datory sinking fund to retire a certain num annually. Ohio requests authority to institu fund. It is also stated that there may be an tion price for the stock which will be main price level for up to a ten year period.

Proceeds of the sale of the stock and the c tributions will be applied to the payment short-term indebtedness of Ohio. It is stat anticipates it will have short-term debt ou December, 1974 of approximately $150,0 the application of any proceeds of the sal reduce such debt.

It is stated that The Public Utilities Comm jurisdiction over the proposed issue and s that no other state commission and no fe other than this Commission, has jurisdict psoed transactions. Fees and expenses to Ohio in connection with the proposed tr supplied by amendment.

NOTICE IS FURTHER GIVEN that any may, not later than December 5, 1974, r that a hearing be held on such matter, st

A248

NATIONAL QUOTATION BUREAU

INCORPORATED

EW YORK
HICAGO

116 NASSAU STREET
NEW YORK, N. Y. 10038

BOSTON
SAN FRANCISCO

DEC 19 1974

o quotation will be published until the broker-dealer seeking to insert the quotation furnishes the information requested Parts 1 and 2 below, and if necessary, the information in Part 3, and duly executes and delivers this form.

PART 1

. Exact name of the issuer and predecessor (if any). A A A ENTERPRISES

. State of incorporation. GA.

. Address of principal executive offices. 6 EXECUTIVE PARK, DR. ATLANTA, GA.

. Complete title and class of security to be quoted. COM

. Par or stated value of security. 10¢

. Name and address of any transfer agent. COMPANY

. Number of shares outstanding of the security as of the end of the issuer's most recent fiscal year. 3,120,672

. Price at which security is to be initially quoted. Bid $ .01 Asked NONE

PART 2

heck the item below which indicates the exemption from Rule 15c2-11 of the Securities Exchange Act of 1934 (the "34 ct") upon which you rely in submitting your quotation.

☐ A. The issuer has filed a registration statement under the Securities Act of 1933 (the "33 Act") which became effective less than 90 calendar days prior to the date hereof, and such registration statement has not been the subject of a stop order which is still in effect, and the undersigned has in its records a copy of the prospectus specified by Section 10(a) of the 33 Act; or

☐ B. The issuer has filed a notification under Regulation A of the 33 Act which became effective less than 40 calendar days prior to the date hereof, and the offering circular provided for under Regulation A has not become the subject of a suspension order which is still in effect, and the undersigned has in his records a copy of such offering circular; or

☐ C. (i) The issuer is required to file reports pursuant to Section 13 or 15d of the 34 Act, or is an issuer of a security covered by Section 12(g) (2) (B) or (G) of the 34 Act; and

(ii) the undersigned has a reasonable basis for believing the issuer is current in filing the reports required to be filed at regular intervals pursuant to Section 13 or 15d of the 34 Act, or, in the case of insurance companies, exempted from Section 12(g) of the 34 Act by subparagraph 12(g) (2) (G) thereof, the annual statement referred to in Section 12(g) (2) (G) (i) of the 34 Act; and

(iii) the undersigned has in his records the issuer's most recent annual report (on Form 10-K) filed pursuant to Section 13 or 15d of the 34 Act; or the annual statement of an insurance company not subject to Section 12(g) of the 34 Act; together with any other reports required to be filed at regular intervals under such provisions of the 34 Act which have been filed by the issuer after such annual report or annual statement; or

☐ D. The security of the issuer on which you are submitting a quotation has been the subject of both bid and asked quotations in an interdealer quotation system at specified prices on each of at least 12 days within the previous 30 calendar days with no more than four business days in succession without such a two-way quotation; or

E. The security of the issuer of which you are submitting a quotation is admitted to trading on a national securities exchange (as registered under the 34 Act) and has been traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted; or

F. The security of the issuer of which you are submitting a quotation is a security of a foreign issuer exempt from Section 12(g) of the 34 Act by reason of compliance with the provisions of Rule 12(g) 3-2(b) thereunder.

G. None of the above.

you have checked A or B above, supply a copy of the prospectus or offering circular to National Quotation Bureau with his Form 211.

your answer was "G. None of the above", please supply the information specified in Part 3.

PART 3

A. Describe the nature of products or services offered by the issuer. DON'T KNOW

B. Describe the nature and the extent of the issuer's facilities. DON'T KNOW

C. Indicate the name of the Chief Executive officer and members of the Board of Directors of the issuer. DON'T KNOW

D. Attach a copy of the issuer's most recent balance sheet and profit and loss retained earning statement. DON'T HAVE

E. Attach similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence. DON'T HAVE

F. State whether the undersigned, or any person associated with the undersigned, is affiliated directly or indirectly with the issuer. NO

G. State whether the quotation is being published or submitted on behalf of any other broker-dealer. If so, state the name of such broker or dealer. NO

H. State whether the quotation is being submitted or published directly or indirectly on behalf of the issuer or any director, officer or any person, directly or indirectly, the beneficial owner of more than 10% of the outstanding units or shares of any equity security of the issuer. If so, state the name of such person and the basis for any exemption under the Federal securities laws for any sales of such securities on behalf of such person. NO

I certify that I have examined this form and, to the best of my knowledge and belief, it is true, correct and complete. I authorize the NATIONAL QUOTATION BUREAU, INCORPORATED *to furnish a copy of this questionnaire and any or all of the information contained in this form to the Securities and Exchange Commission or any other regulatory agency.*

Name of employee to contact regarding information contained herein SAMUEL H. SLOAN Phone (212) 583-8565

Name and Signature of Partner or Officer Samuel H. Sloan

DEC. 17, 1

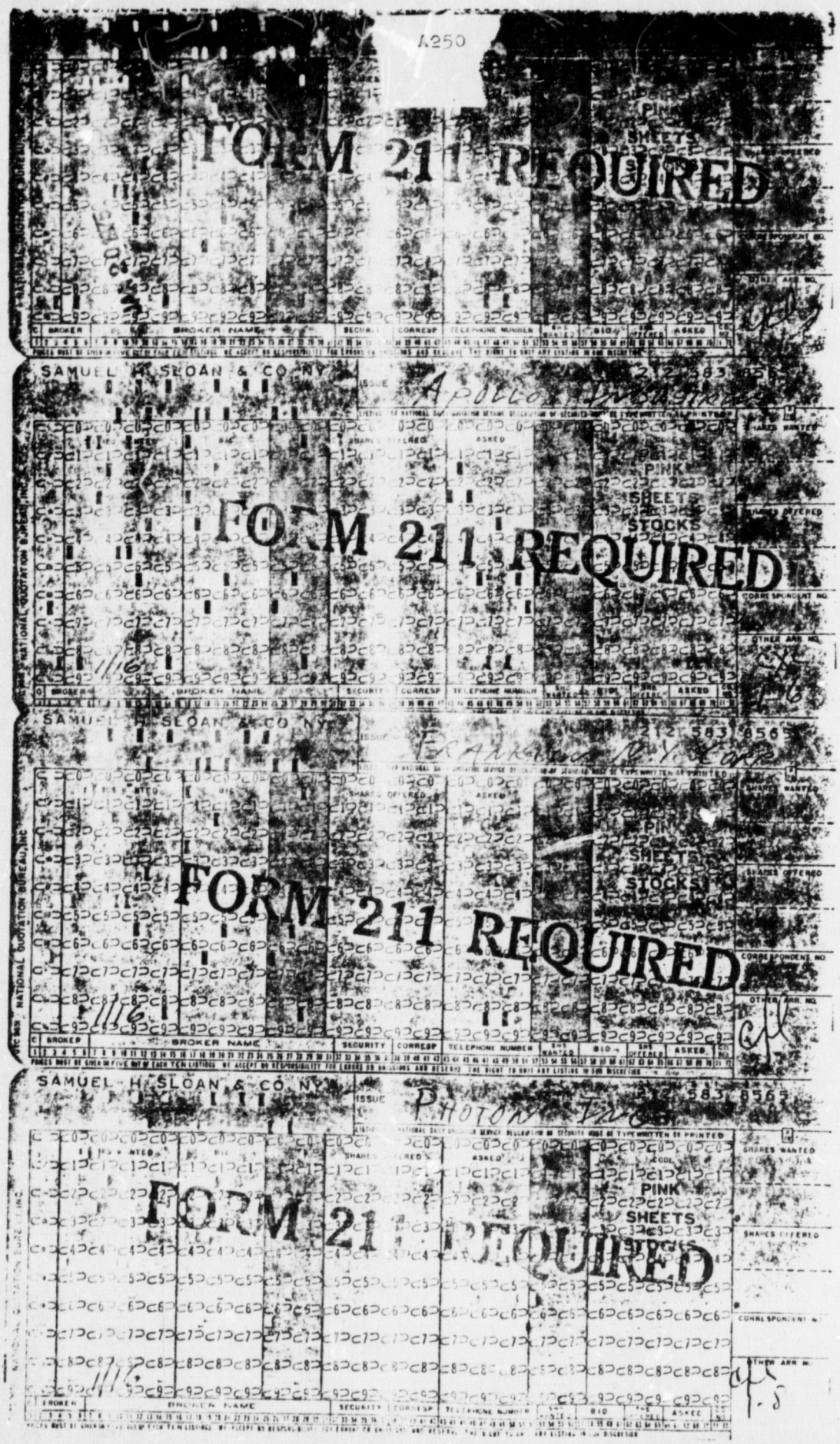
SAMUEL H. SLOAN Date

Firm Name

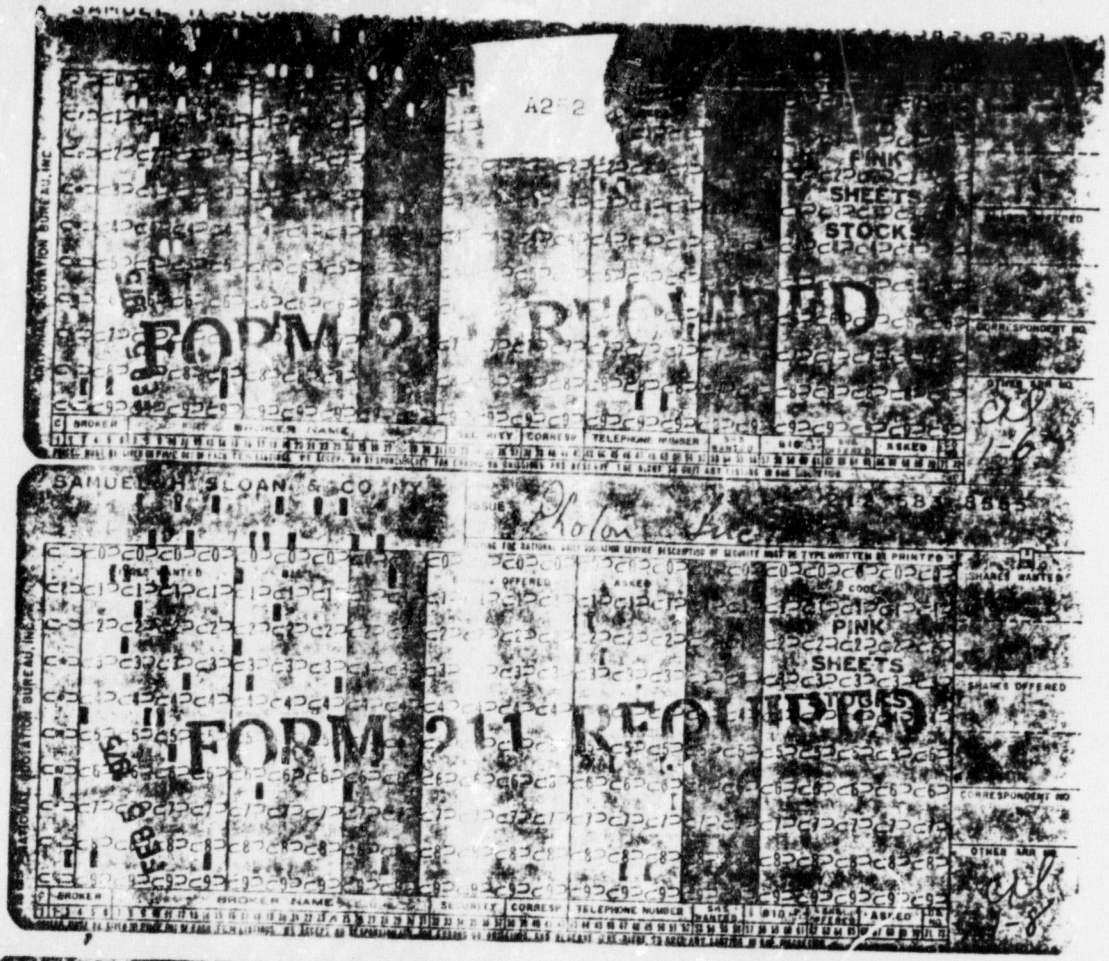
DEC 18 1974

120 LIBERTY ST. , NEW YORK, N. Y. 10006 Zip No.

Address


A250
FORM 211 REQUIRED
SAMUEL H. SLOAN & CO NY
PINK SHEETS STOCKS
FORM 211 REQUIRED
SAMUEL H. SLOAN & CO NY
212 583 8562
PINK SHEETS STOCKS
FORM 211 REQUIRED
SAMUEL H. SLOAN & CO NY
212 583 8562
PINK SHEETS STOCKS
FORM 21 REQUIRED

SAMUEL H SLOAN & CO NY
212 583 8565
PINK SHEETS
STOCKS
FORM 211 REQUIRED
NATIONAL QUOTATION BUREAU, INC.
BROKER NAME
SECURITY
CORRESP
TELEPHONE NUMBER
BID
ASKED
SHARES WANTED
SHARES OFFERED
CORRESPONDENT #
OTHER ARR #


PINK
SHEETS
STOCKS
FORM 211 REQUIRED
FORM 211 REQUIRED
FORM 211 REQUIRED

A253

NATIONAL QUOTATION BUREAU

INCORPORATED

NEW YORK
CHICAGO

116 NASSAU STREET
NEW YORK, N. Y. 10038

BOSTON

No quotation will be published until the broker-dealer seeking to insert the quotation furnishes the information requested in Parts 1 and 2 below, and if necessary, the information in Part 3, and duly executes and delivers this form.

PART 1

A. Exact name of the issuer and predecessor (if any). TRIEX INTERNATIONAL CORP

B. State of incorporation. FLA.

C. Address of principal executive offices. C/O ROBERT SLATKO 28 W. FLAGLER MIAMI, FLA.

D. Complete title and class of security to be quoted. COM.

E. Par or stated value of security. 1¢

F. Name and address of any transfer agent. COMPANY OFFICE

G. Number of shares outstanding of the security as of the end of the issuer's most recent fiscal year. 1,000,000

H. Price at which security is to be initially quoted. Bid NO Asked NO

PART 2

Check the item below which indicates the exemption from Rule 15c2-11 of the Securities Exchange Act of 1934 (the "34 Act") upon which you rely in submitting your quotation.

☐ A. The issuer has filed a registration statement under the Securities Act of 1933 (the "33 Act") which became effective less than 90 calendar days prior to the date hereof, and such registration statement has not been the subject of a stop order which is still in effect, and the undersigned has in its records a copy of the prospectus specified by Section 10(a) of the 33 Act; or

☐ B. The issuer has filed a notification under Regulation A of the 33 Act which became effective less than 40 calendar days prior to the date hereof, and the offering circular provided for under Regulation A has not become the subject of a suspension order which is still in effect, and the undersigned has in his records a copy of such offering circular; or

☐ C. (i) The issuer is required to file reports pursuant to Section 13 or 15d of the 34 Act, or is an issuer of a security covered by Section 12(g) (2) (B) or (G) of the 34 Act; and

(ii) the undersigned has a reasonable basis for believing the issuer is current in filing the reports required to be filed at regular intervals pursuant to Section 13 or 15d of the 34 Act, or, in the case of insurance companies, exempted from Section 12(g) of the 34 Act by subparagraph 12(g) (2) (G) thereof, the annual statement referred to in Section 12(g) (2) (G) (i) of the 34 Act; and

(iii) the undersigned has in his records the issuer's most recent annual report (on Form 10-K) filed pursuant to Section 13 or 15d of the 34 Act; or the annual statement of an insurance company not subject to Section 12(g) of the 34 Act; together with any other reports required to be filed at regular intervals under such provisions of the 34 Act which have been filed by the issuer after such annual report or annual statement; or

☐ D. The security of the issuer on which you are submitting a quotation has been the subject of both bid and asked quotations in an interdealer quotation system at specified prices on each of at least 12 days within the previous 30 calendar days with no more than four business days in succession without such a two-way quotation; or

. The security of the issuer of which you are submitting a quotation is admitted to trading on a national securities exchange (as registered under the 34 Act) and has been traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted; or

. The security of the issuer of which you are submitting a quotation is a security of a foreign issuer exempt from Section 12(g) of the 34 Act by reason of compliance with the provisions of Rule 12(g) 3-2(b) thereunder.

G. None of the above.

ou have checked A or B above, supply a copy of the prospectus or offering circular to National Quotation Bureau with Form 211.

our answer was "G. None of the above", please supply the information specified in Part 3.

PART 3

Describe the nature of products or services offered by the issuer. DON'T KNOW

Describe the nature and the extent of the issuer's facilities. DON'T KNOW

Indicate the name of the Chief Executive officer and members of the Board of Directors of the issuer.

Attach a copy of the issuer's most recent balance sheet and profit and loss retained earning statement. DON'T KNOW

Attach similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence. DON'T HAVE

State whether the undersigned, or any person associated with the undersigned, is affiliated directly or indirectly with the issuer. DON'T HAVE

State whether the quotation is being published or submitted on behalf of any other broker-dealer. If so, state the name of such broker or dealer. NO

State whether the quotation is being submitted or published directly or indirectly on behalf of the issuer or any director, officer or any person, directly or indirectly, the beneficial owner of more than 10% of the outstanding units or shares of any equity security of the issuer. If so, state the name of such person and the basis for any exemption under the Federal securities laws for any sales of such securities on behalf of such person. NO

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ertify that I have examined this form and, to the best of my knowledge and belief, it is true, correct and complete. I horize the NATIONAL QUOTATION BUREAU, INCORPORATED *to furnish a copy of this questionnaire and any or all of the ormation contained in this form to the Securities and Exchange Commission or any other regulatory agency.*

me of employee to contact regarding ormation contained herein Samuel H. Koon Phone (212) 583-8565

me and Signature of Partner or Officer Samuel H Koon

m Name Samuel H. Koon Date JAN. 29, 1975

dress 114 Liberty St. New York, N.Y. Zip No. 10006

FORM 211

A255

STOCK SECTION
February 10, 1978

THE NATIONAL DAILY QUOTATION SERVICE

Published by NATIONAL QUOTATION BUREAU, Inc.
P. O. Box 49, Peck Slip Station,
New York, N. Y. 10038
212-349-1800
LISTING DEPT. 212-349-2212
TWX 710-581-4560

Published daily except on Stock Exchanges and legal holidays. Offerings and wants are subject to previous sale or change in price. This information is compiled with care from sources believed to be accurate but we cannot guarantee it.

None of the solicitations, carried in this service, of offers to sell or to buy shall constitute solicitations, either in any state within which or to any person to whom the solicitation would be unlawful, or by any dealer in any state in which such dealer is not licensed.

SYMBOLS / Listings received by mail today. All other listings current today.

* Correspondent.

ø "Other arrangement."

VJ In Bankruptcy or receivership or being reorganized under the Bankruptcy Act, or securities assumed by such companies.

NRA Representative Bid—Asked Quotations supplied through NASDAQ as of 11 A. M.

N Y S E INDEX - THE COMMON INDUSTRIAL STOCK AVERAGE.

35 ISSUES. DIVISOR 2.50 ADJUSTED FOR SPLITS AND STOCK DIVIDENDS.

	OPENED	CLOSED	CHANGED	HIGH	LOW
1978	470.60	461.72	-100.98	488.27 FEB 10	370.14 OCT 4
1978	502.91			502.91 JAN 3	370.14 OCT 4
NOV	536.04	509.92	- 27.34	540.80 NOV 6	509.92 NOV 30
DEC	509.92	481.72	- 19.70	509.92 DEC 1	480.31 DEC 13
JAN	502.91	500.92	+ 19.01	504.95 JAN 30	502.91 JAN 3
FEB	500.54			500.54 FEB 6	500.54 FEB 3
FEB 6					10
	349.93 + 2.39	350.72 + 1.02	350.98 + 2.00	504.56 - 2.30	350.98 - 2.11

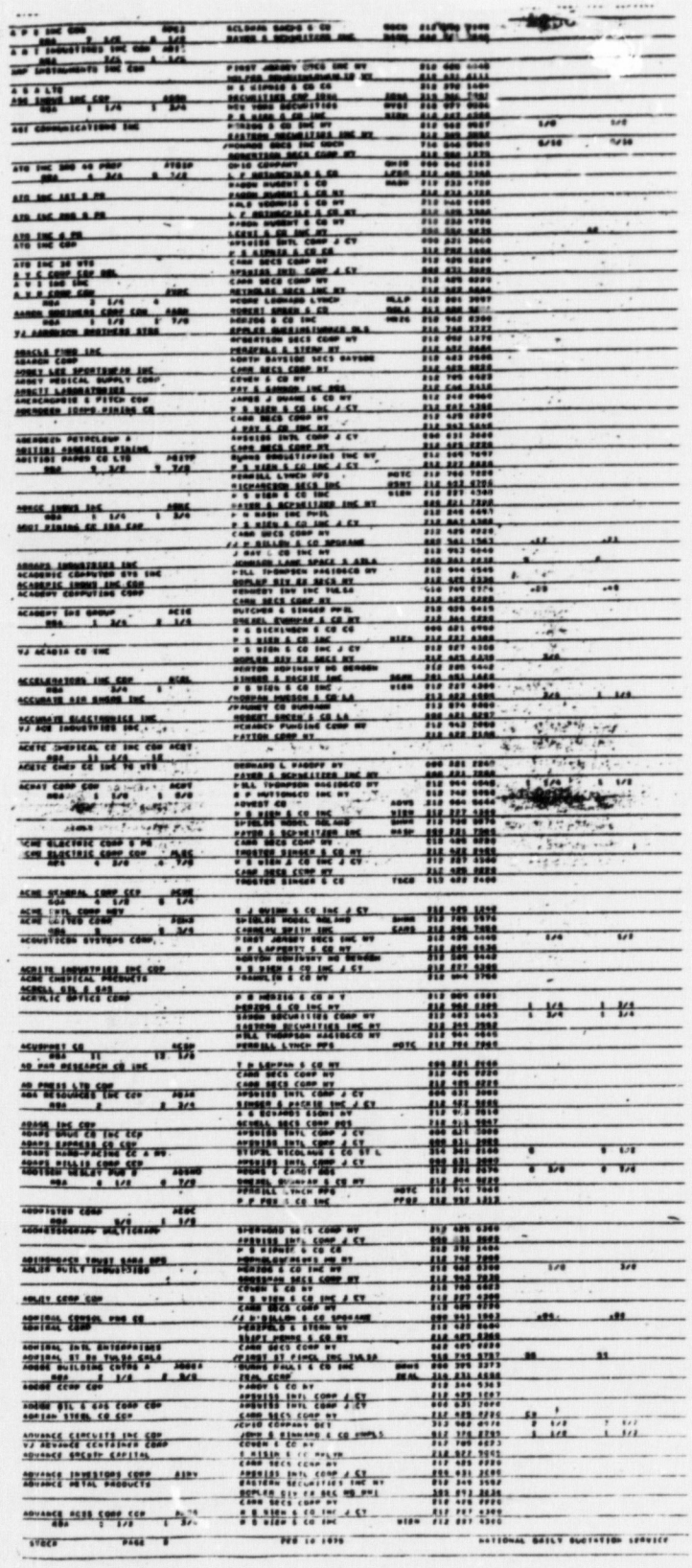
N Y S E INSURANCE STOCK AVERAGE

15 ISSUES. DIVISOR 2.32 ADJUSTED FOR SPLITS AND STOCK DIVIDENDS.

	OPENED	CLOSED	CHANGED	HIGH	LOW
1978	102.98	88.65	- 20.89	105.61 JAN 10	81.87 OCT 4
1978	89.85			97.31 FEB 6	81.87 OCT 4
NOV	89.82	88.18	- 2.88	92.66 NOV 30	83.78 NOV 21
DEC	72.65	88.68	- 1.50	92.65 DEC 1	83.82 DEC 18
JAN	89.82	74.82	+ 8.63	74.24 JAN 30	83.86 JAN 19
FEB	76.26			77.31 FEB 6	76.87 FEB 10
FEB 6					10
	72.65 + 2.52	76.56 - 2.00	77.31 + 2.75	76.79 - 2.00	76.87 - 2.72

SECURITY	NASD AQ	FIRM NAME	TELEPHONE	BID	ASKED
A & B PLASTIC PAK CO CORP		SAMUEL P. BLOOM & CO NY	212 682 8825		
A & E CORP		PBW STOCK EXCHANGE LISTED	212 661 4760		
		CORP RECS CORP NY	212 425 5065		
A & A INDUSTRIES INC	ANAI	STEVENS SHIPLEY & CO LI	212 425 6250		
PFD 2 1/2	3 1/2			2/16	
A & C INDUSTRIES INC		H B LICHTENSTEIN & CO NY	212 964 6981		
		IRVING BIERER & CO NY	212 682 2580		
		/STONE RECS INC PI LEO NJ	212 393 2120		
APIR INC		E J DUNNE & CO INC J CY	212 425 1240		
A C & S CORP COP		E J DUNNE & CO INC J CY	212 425 1240		
ACL LABORATORIES INTL INC		CAMP SECS CORP NY	212 425 7220		
ACS INDUSTRIES INC		ARNOLD INTL CORP J CY	212 425 1067		
		L L ARROW & CO INC N Y	212 344 2287	3/4	1 1/8
		P DEPSON & CO INC NY	212 344 2930	3/4	1
		PHIL THOMPSON MARIOSCO NY	212 964 4545	3/4	1 1/4
		BERNARD L PROOFF NY	516 791 3943		
A C S INVESTOR INC		PIC-SOUTHWEST SECS DLR	212 421 1880	1/8	1/8
ADA FINANCIAL SVCS CORP		PERSON & CO INC NY	212 943 1660	3/8	7/8
		DENSEN BIN BY SECS NY	212 425 6880		
		D D WIEN & CO INC J CY	212 425 2424		
ADAMS INTERFUNDS ADM		/DONALD LYNCH OPT NY	212 766 2805	27 1/2	29 1/2
		CARL DAVID & CO INC NY	212 425 7868		
ADS TECHNOLOGY SYSTEMS	ADST	ADS-DD CORPORATION NY	212 363 5815		
PFD 2 3/4	3 1/8	D G DICKINSON & CO CA	800 631 6040		
AFA PROTECTIVE SYS INC	AFAP	DIXON & SCHWITZER INC	800 221 7260		
PFD 3 1/2	4 1/2	P M ASSP INC	212 425 6552		
A G P INDUSTRIES		/PRESIDENTIAL SECS CO GA	404 434 4230	1 3/8	1 3/4
AGS COMPUTERS INC		ARTHUR A DAVIS NY	212 943 7960	1.50	
		/John SECS CORP NY	212 425 0250		
AID INC DELA CORP	AIDCA	M J DIGBY & CO INC	212 425 5800		
PFD 2	2 3/4	DIGBY & DICKIE INC	800 221 7260		
A I I S INC		PERKINS & CO INC NY	212 943 3300		
		SOMERSET SECS CORP NY	212 425 7300	1 3/4	2 1/8
		BERGEN & CO INC NY	212 943 5880		
		COMPLEX SEC BY SECS NY	212 425 7330		
		PETER D SCHWITZER INC NY	800 221 7260		
		PRIME FISHERINCCO INC NY	212 344 2900		
		J P BERN & CO NY	212 594 6252	1 1/2	
A J INDUSTRIES INC		AMBASS INTL CORP J CY	800 631 5080		
		P S DIPPOLT & CO CO	212 943 1685		
A L E INC CCP		CCCA INVESTMENT CC CO	800 621 0810		
A M F INC 3 95 PR		MCMULLEN & PARO NY	212 425 1845		
		LIVERPOOL SECS NY	212 732 7394		
		VANCOUVER TRADE & SC INC NY	212 785 7745		
A M P INC CCP		SWIFT DUNNE & CO NY	212 425 0240		
		ARNOLD INTL CORP J CY	800 221 5795		
A M I INDUSTRIES INC /**		J S DIGBY & CO CA	213 742 3404		
A M I C CORP A C		JOSEPH M PEARN & CO NY	212 943 3711		
A M I S INC CCP	AIRI	ARNOLD INTL CORP J CY	800 631 5080		
A M P INC	AMPI				
PFD 2 3/4	4 1/4	GALLANT SECS NE NY	212 481 2770		
A M P ELECTRONICS INC /**		APPLE & CO INC NY	212 425 2424	1	1 1/2
		PERSON & CO INC NY	212 344 4500		
A M L CORPORATION CCP		ARNOLD INTL CORP J CY	800 631 5080		
A M S CORP NTS	AMSCO	SINGER & DACHE INC	212 425-4921 1980		
PFD 1/2	1/2	PERSON & CO INC	800 221 5350		
A M T INC CCP	AMTI	PEAR STEARNS & CO	800 221 5350		

E v 8132 I



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN, & CO.,

Plaintiff,

-against-

SECURITIES & EXCHANGE COMMISSION,
et al.,

Defendants.
- - - - - - - - - - - - - - - - X

74 Civil 2792

SUPPLEMENTAL AFFIDAVIT
(TPG)

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

SAMUEL H. SLOAN, being duly sworn, deposes and says:

1. Due to my hast in serving and filing motion papers by February 7, 1975, I failed to observe a number of typographical errors made by my secretary on pages 4 - 10 of my affidavit sworn to February 7, 1975. Certain of these errors might change the intended meaning of what was said.

2. In particular paragraph 20 (page 6) should read as follows:

> "20. At that conference, Mr. Brandt falsely represented to Judge McLean that I had not submitted an April, 1971 trial balance to the S.E.C. as requested. I knew that I had submitted the trial balance and that Mr. Brandt well knew this to be the case. (emphasis added to indicate corrections).

3. Furthermore, line four of paragraph 23 should read left instead of right.

4. In connection with my motions for disqualification, I should like to draw the attention of this court to Rules 3 and 4 of the General Rules of the United States Disctict Court for the

Southern District of New York. From my reading of Rule 3, it does not appear that Mr. Hensley, Mr. Derrickson, Mr. Woldow, or Mr. Taylor could possibly be in compliance with that rule for the reason that they do not practice here or maintain offices here nor have they moved for leave to argue or try this case.

5. Furthermore, Rule 4(a) states that a member of the bar of this court not having an office within the Southern District of New York shall designate a member of the bar upon whom service of papers may be made. Mr. Taylor has failed to do this and I ask that he be disqualified for that reason. In connection with this request, I would like to point out that Mr. Taylor has recently complained, in papers dated February 4, 1975 and submitted to the United States Court of Appeals for the Second Circuit, that, in some cases, I served motion papers on the New York Regional office of the S.E.C. rather than on Mr. Taylor personally. (In the appeal in question, Mr. Taylor had not appeared as attorney of record and therefore my service was entirely proper.) However, in view of the inconvenience which the appearance of Mr. Taylor has caused and is likely to cause in the future to all parties and in view of the large number of attorneys employed by the New York Regional Office of the S.E.C. who are qualified to appear in this court, I believe that Mr. Taylor should be disqualified.

6. While Mr. Hensley, Mr. Derrickson and Mr. Woldow may have complied with the letter of Rule 4(a), they have not complied with the spirit of the same rule.

Samuel H. Sloan
SAMUEL H. SLOAN

orn to before me this
th day of February, 1975

ROBERTA [illegible]
ARY PUBLIC, STATE OF NEW YORK
NO. 31-4518042
UALIFIED IN NEW YORK COUNTY
MISSION EXPIRES MARCH 30, 1976

A259

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiffs,

-against-

SECURITIES AND EXCHANGE COMMISSION,
UNITED STATES OF AMERICA as the
SECURITIES AND EXCHANGE COMMISSION,
NATIONAL QUOTATION BUREAU, INC.,
NATIONAL ASSOCIATION OF SECURITIES DEALERS,
INC.,
BUNKER RAMO CORP., DISCLOSURE, INC.
NATIONAL CLEARING CORP.,

Defendants.
- X

74 Civil 2792

TPG

TEMPORARY RESTRAINING ORDER
and
ORDER TO SHOW CAUSE

On the motion of the plaintiff, Samuel H. Sloan, and upon the annexed affidavit of Samuel H. Sloan sworn to the 10th day of January, 1975 and upon the summons and complaint in this action and upon all the papers and proceedings had herein and it appearing that defendant National Quotation Bureau, Inc., unless restrained will continue to refuse to permit the plaintiff to list his name in the pink sheets published by the National Quotation Bureau, Inc. and it appearing that a cause of action exists against the National Quotation Bureau, Inc. for violations of the Clayton Act and the Sherman Act and that, unless restrained, the National Quotation Bureau, Inc. will cause immediate and irreparable injury, loss and damage to the plaintiff herein, it is hereby

ORDERED that defendant National Quotation Bureau, Inc. show cause before the Hon. Thomas P. Griesa on January 31, 1975 at 4:30 p.m. in Room 129 of the United States Courthouse, Foley Square, New York, N.Y. or as soon thereafter

as the matter may be heard why a preliminary injunction pursuant to Rule 65 F. R. Civ. P. should not be granted as requested by the plaintiff,

AND IT IS FURTHER ORDERED that pending determination of this motion for a preliminary injunction that the National Quotation Bureau, Inc. be and hereby is:

(a) Restrained and enjoined from refusing to list the name of the plaintiff herein under any securities in the pink and yellow sheets published by the National Quotation Bureau, Inc.

(b) Ordered to list the name of the plaintiff under any and all securities in which the plaintiff may desire to be listed.

AND IT IS FURTHER ORDERED that personal service by Samuel H. Sloan of the within order shall be effected on Rogers & Wells, counsel for the National Quotation Bureau, Inc. by 5:00 P.M. m. on January 10, 1975.

1st L. P. Griesa

UNITED STATES DISTRICT JUDGE

Dated: New York, New York
January 10, 1975
~~at m.~~

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiffs,

-against-

SECURITIES AND EXCHANGE COMMISSION,
UNITED STATES OF AMERICA as the
SECURITIES AND EXCHANGE COMMISSION,
NATIONAL QUOTATION BUREAU, INC.,
NATIONAL ASSOCIATION OF SECURITIES DEALERS,
INC., BUNKER RAMO CORP., DISCLOSURE, INC.,
NATIONAL CLEARING CORP.,

Defendants.
- X

74 Civil 2792

TPG

AFFIDAVIT IN SUPPORT
OF PLAINTIFFS' MOTION
FOR A TEMPORARY RESTRAINING
ORDER AND A PRELIMINARY
INJUNCTION

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

SAMUEL H. SLOAN, being duly sworn, deposes and says:

1. I make this affidavit in support of a motion for a temporary restraining order and a preliminary injunction against defendant National Quotation Bureau, Inc. ("NQB").

2. In early December, 1974, I paid a check to the NQB in the amount of $1,755.87 and a subsequent check in the amount of $436.32 . As a result of these payments I became a paid up subscriber to the pink sheets until July 1, 1975.

3. During the week from December 17, 1974 ot December 23, 1974, I submitted, according to my count, 373 Forms 211 to the NQB. These Forms 211 are essentially listing applications for securities not regularly listed in the pink sheets.

4. I understand that approximately 50 of these applications were un-

necessary because the securities in question were already in the pink sheets. A few others had mistakenly been submitted unsigned by me, and a few more were the subject of a name change. With those exceptions all 373 Forms 211 were accepted by the NQB and the securities in question were duly published in the pink sheets except for approximately 17 securities which the NQB apparently refused to list because these securities were currently subject to a suspension of trading by the S.E.C.

5. On December 30, 1974, the S.E.C. commenced an injunctive proceeding entitled S.E.C. v. Sloan et ano, 74 Civil 5729 (RJW) and obtained a temporary restraining order against me on that date. On January 8, 1975 this order was extended by Judge Griesa, the Part I Judge, until January 17, 1975.

6. It appears that on December 31, 1974, the S.E.C. served a copy of the temporary restraining order on the NQB and directed the NQB by telephone not to list my name under any securities. In any event, the present situation is that the NQB will not take my listings while the TRO is in effect even though I am a paid subscriber to the NQB.

7. According to Judge Ward's order, I am restrained from initiating over-the-counter quotations. The fact is that I have no intention or present desire to list quotations in the pink sheets. I am quite satisfied to list my name only in the pink sheets. Specifically, Rule 15c2-11, the rule on which the S.E.C. bases this part of its injunctive action, only prohibits the publication of actual quotations. There is nothing in the rule to prohibit a broker from listing a particular security "in name only" or without a bid or on asked quotation regardless of how much or how little information is publically available. For this reason, the listings which I desire to insert in the

pink sheets could not possibly violate Rule 15c2-11.

8. The reason that all of this was necessary was because of a rule which the NQB imposes on all of its subscribers which is that the initial listing of any security must contain a bid or an asked quotation. The reason the NQB does this is to obtain prices which it can publish in its semi-annual National Stock Summary which it sells to banks and brokers. Once an initial quotation has been listed in the pink sheets, the NQB can and does permit its subscribers to continue to make listings on an "in name only" basis indefinitely.

9. It is clear that the NQB is operating in violation of the Sherman and Clayton Acts because it has no competition and there is no other place where I can list low priced over-the-counter securities. If this order is not granted, I will suffer irreparable injury because I will be effectively prohibited from buying and selling the securities which I desire to list. The NQB, on the other hand, will suffer no injury and will, in fact, be fulfilling its obligation to me as a subscriber.

10. No prior application has been made for the relief requested herein.

WHEREFORE, the undersigned respectfully prays that this court grant a temporary restraining order and a preliminary injunction enjoining the NQB from refusing to list the name of the plaintiff in the pink sheets under any security.

Samuel H. Sloan

SAMUEL H. SLOAN

Sworn to before me this
10th day of January, 1975

ROBERTA E. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4613342
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976

ROBERTA E. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4613342
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976

MEMO ENDORSED ON BACK OF TEMPORARY RESTRAINING ORDER

Motion denied.

See minutes of 2/14/75.

So ordered.

s/Thomas P. Griesa
USDJ

2/26/75

U.S. DISTRICT COURT
FILED
FEB 24 1975
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- X

SAMUEL H. SLOAN,
SAMUEL H. SLOAN & CO.,

Plaintiff,

-against-

SECURITIES & EXCHANGE COMMISSION,
et al.,

Defendants.
- X

NOTICE OF MOTION
FOR REARGUMENT

Index No. 74 Civil 2792
(TPG)

PLEASE TAKE NOTICE that upon the accompanying memorandum of law and all the papers and proceedings had herein, the undersigned will move this court on the 7th day of March, 1975 pursuant to Rule 9(m) of the Federal Local Rules of the Southern District Court for reargument on the grounds that the court apparently overlooked the fact that there is no proceeding under Section 15A(n) of the Securities Exchange Act of 1934 ("Exchange Act") or other sections of the Exchange Act or under the rules and customs of the NASD and the S.E.C. wherein a private party can file a petition to abrogate or otherwise challenge a rule or regulation of the NASD or the S.E.C. including the rules, if any, regarding the rates charged for the NASDAQ system and that the court apparently overlooked the fact that a dismissal of this action violates the right to litigate under Scheuer v. Rhodes ___U.S.___, 94 S. Ct. 1683, 40 L.Ed. 2d 90 (1974)and for other reasons set forth more fully in the memorandum of law.

Respectfully submitted,

Samuel H. Sloan

Samuel H. Sloan
Plaintiff, pro se
114 Liberty Street
New York, N.Y. 10006
(212) 583-8565

TO: Thomas L. Taylor III
Securities & Exchange Commission
500 N. Capitol Street
Washington, D.C. 20549

Rogers & Wells, Esqs.
Counsel for National Quotation Bureau, Inc.
200 Park Avenue
New York, N.Y.

Breed, Abbott & Morgan, Esqs.
Counsel for NASD, NCC and Bunker Ramo Corp.
One Chase Manhattan Plaza
New York, N.Y.

Willkie, Farr & Gallagher, Esqs.
Counsel for Disclosure, Inc.
One Chase Manhattan Plaza
New York, N.Y.

Lloyd J. Derrickson
National Association of Securities Dealers
1735 K Street, N.W.
Washington, D.C. 20006

Paul J. Curran
U.S. Attorney
U.S. Courthouse
Foley Square
New York, N.Y. 10007

STATE OF NEW YORK
SS:
COUNTY OF NEW YORK

Samuel H. Sloan, being duly sworn, deposes and says that on February 23, 1975 he served a copy of this notice of motion and the accompanying memorandum of law upon:

Thomas L. Taylor III
Securities & Exchange Commission
500 N. Capitol Street
Washington, D.C. 20549

and

Lloyd J. Derrickson
National Association of Securities Dealers
1735 K. Street, N.W.
Washington, D.C. 20006

by mailing the same air mail special delivery in a properly post paid wrapper at a post office.

Samuel H. Sloan
SAMUEL H. SLOAN

Sworn to before me this
23rd day of February, 1975

Notary Public

ROBERTA E. FISHBEIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31-4518842
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1976

MEMO ENDORSED ON BACK OF MOTION FOR REARGUMENT

Motion denied.

So ordered.

s/T.P.Griesa
USDJ

2/28/75

SUMMONS IN A CIVIL ACTION

A209

CIV. 1 (5/69)
(Formerly B. C. Form No. 1 Rev. 6/1/53)

United States District Court

FOR THE

Southern District of New York

74 CIVIL ACTION FILE NO. 2 192

Samuel H. Sloan

Samuel H Sloan & Co

Plaintiff

v.

Securities & Exchange Comm.

United States of America
ex rel Securities & Exchange Comm.
et al.

Defendant

(ALIAS)
SUMMONS

Samuel H. Sloan
114 Liberty St.
New York, N.Y. 10006

to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT
Clerk of Court.

Deputy Clerk.

Date: FEB 24 1975

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

A270

U.S. DISTRICT COURT
FILED
FEB 27 1975
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN

- against -

SECURITIES AND EXCHANGE COMMISSION
UNITED STATES OF AMERICA as the
SECURITIES & EXCHANGE COMMISSION
NATIONAL QUOTATION BUREAU, INC.
BUNKER RAMO CORP.
NATIONAL ASSOCIATION OF SECURITIES
DEALERS INC.
DISCLOSURE, INC.
NATIONAL CLEARING CORP.

74 Civil 2792

JUDGMENT

The defendant Securities and Exchange Commission having moved the Court to dismiss the action against it for lack of jurisdiction and for failure to state claim upon which relief can be granted pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Thomas P. Griesa, United States District Judge, and the Court thereafter on February 24, 1975, having handed down its memorandum granting the said motion as to all defendants, it is,

ORDERED, ADJUDGED and DECREED: that defendants SECURITIES EXCHANGE COMMISSION, et al., have judgment against SAMUEL H. SLOAN, dismissing the complaint without leave to replead.

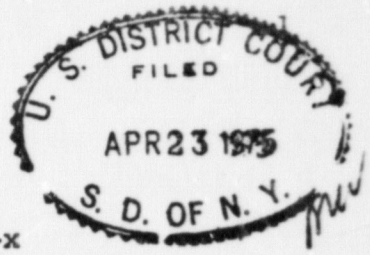
Dated: New York, N.Y.
February 26, 1975.

Raymond F. Burghardt
Clerk

jkjp

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK



SAMUEL H. SLOAN and SAMUEL H. SLOAN & CO.,

Plaintiffs,

vs. 74 CIV 2792

SECURITIES AND EXCHANGE COMMISSION, UNITED STATES OF AMERICA, as the SECURITIES AND EXCHANGE COMMISSION, NATIONAL QUOTATION BUREAU, BUNKER RAMO CORPORATION, NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., DISCLOSURE, INC., and NATIONAL CLEARING CORPORATION,

Defendants.

February 14, 1975
4:40 p.m.

BEFORE:

HON. THOMAS P. GRIESA,

District Judge.

A P P E A R A N C E S:

SAMUEL H. SLOAN, Pro Se

SECURITIES & EXCHANGE COMMISSION
THOMAS L. TAYLOR, III, ESQ.,
Of Counsel

APPEARANCES (Continued):

ROGERS & WELLS, ESQS.
Attorneys for defendant Nat'l Quotation Bureau
GEORGE W. BRANDT, JR., ESQ.,
Of Counsel

ROBERT J. WOLDOW, ESQ.
Vice president and general counsel,
National Clearing Corporation;
-and-
BREED, ABBOTT & MORGAN, ESQS.
RICHARD LYON, ESQ.,
Of Counsel

WILLKIE, FARR & GALLAGHER, ESQS.
Attorneys for defendant Disclosure, Inc.,
PATRICIA WILLIAMS, ESQ.,
Of Counsel

oOo

THE COURT: Mr. Taylor.

MR. TAYLOR: Yes, your Honor.

THE COURT: What is the nature of the action before Judge Ward exactly?

MR. TAYLOR: Your Honor, that is an enforcement action by the Securities and Exchange Commission to restrain Mr. Sloan from willful violations of the record-keeping provisions of the 834 Act as well as violating Rule 15(c)2.11 which goes to information which must be maintained by a broker-dealer prior to submitting quotations to the pink sheets.

THE COURT: Well now, what is the ultimate object of that action, to enjoin him from acting as a broker-dealer further or what?

MR. TAYLOR: Your Honor, we have a preliminary injunction in effect. Mr. Sloan has sought an expedited appeal to the Second Circuit. The object is to--

THE COURT: What does the preliminary injunction do?

MR. TAYLOR: Your Honor, it requires Mr. Sloan to give the Commission access to his books and records as a registered broker-dealer. It also requires that he cease submitting quotations to quotations media in violation of Rule 15(c)2.11.

THE COURT: So he is enjoined, in effect, now from submitting quotations, right?

MR. TAYLOR: In violation of the rule, yes, your Honor.

Now, there is another injunction outstanding against Mr. Sloan which is permanent, also on appeal, that goes to recordkeeping and that type of violations.

THE COURT: What I would like to know is the net effect of all existing injunctions against him. Can you just summarize; what is the action in which there is a permanent injunction?

MR. TAYLOR: The action where the permanent injunction is outstanding, your Honor, Mr. Sloan is enjoined from doing business as a broker-dealer in securities while not maintaining books and records consistent with the Commission's regulations.

He is also enjoined from operating as a broker-dealer in securities while not in compliance with the net capital rule.

THE COURT: The trouble with those injunctions is that is like rephrasing the law. In other words, everybody in the country is forbidden from operating as a broker-dealer until they comply with the law.

Now, what I am trying to get at, I assume that something more is meant by the injunctions and that--

MR. TAYLOR: Your Honor, if you are asking me if he is enjoined from operating and doing business at this point--

THE COURT: Right.

MR. TAYLOR: No, he is not. But I should say, without complicating it too much, there is also an administrative proceeding outstanding. An administrative law judge has issued an initial decision revoking his registration to operate as a broker-dealer. That is going through the Appellate process before the Commission itself, and the

Commission's opinion in that action is--I certainly wouldn't want to represent that it is momentary, but I suspect that it will be public soon.

THE COURT: Okay. Now, let's start with that. When was the administrative--what is the name and number of that proceeding?

MR. TAYLOR: The administrative proceeding, your Honor?

THE COURT: Right.

MR. TAYLOR: I am not sure I have the number with me. Mr. Sloan may have.

MR. SLOAN: I believe the number is 72-3680, but in any case, it is reported in 369 Fed. Supplement 994.

THE COURT: 369 Fed. Supplement?

MR. SLOAN: 994.

THE COURT: 994. What is that?

MR. SLOAN: 1973.

THE COURT: The administrative judge's--

MR. SLOAN: No, in that case there was--the number is reported in that citation. I just gave because there was a motion made before Judge Ward for discovery of the administrative proceedings transcript, and he included the number in his decision. It is a two-page

decision, not to be confused with the decision immediately following that.

THE COURT: So that is just the discovery action, right?

MR. SLOAN: The reason why it is in the Federal Supplements is because of the discovery motion.

THE COURT: Let's take the SEC's administrative proceeding to revoke Mr. Sloan's broker-dealer license. Am I characterizing it right?

MR. TAYLOR: Yes, your Honor, that's correct.

THE COURT: And you don't have the formal caption or number here, right?

MR. TAYLOR: No, your Honor, I don't believe I have any of those papers.

THE COURT: And there was an administrative judge's decision doing what?

MR. TAYLOR: Initial decision to revoke Mr. Sloan's broker-dealer registration. The effect of that order, of course, is--that order is not effective pending Mr. Sloan's appeal of it to the Commission.

THE COURT: All right. Is the decision on appeal expected shortly?

MR. TAYLOR: I would say so, your Honor.

THE COURT: Now, then, you say there was an

action in--was it in this Court--in which a permanent injunction has been obtained?

MR. TAYLOR: Yes, your Honor, it is in the Southern District before Judge Ward.

THE COURT: I thought you said there was a permanent injunction.

MR. TAYLOR: That was also before Judge Ward.

THE COURT: All right. That is called SEC versus Sloan.

MR. TAYLOR: Yes, sir.

THE COURT: What is the number of that case?

MR. SLOAN: Your Honor, I would like to make a distinction here. The first case is called SEC against Sloan & Company, 369 Fed. Supplement 996. Then there is another action just started called SEC against Sloan, so there is a slight difference in the caption.

THE COURT: The Sloan & Company, is there a permanent injunction?

MR. SLOAN: Yes, there is.

THE COURT: On appeal. Right. And it raises what violations, the violations of Rule 15--

MR. TAYLOR: C31 and I believe 17(A)4.

THE COURT: Wait a minute. The reason I am asking all this, we have got all of this litigation, and

you raised in your brief the possibility that these general allegations raised here were appropriate defensive allegations elsewhere, and I don't think that is a bad idea, but I have got to know what these "elsewheres" are. I would like to know, and I think he shouldn't be permitted to litigate the same thing in 15 different cases.

MR. TAYLOR: Your Honor, in our brief he was being sued under 15(C)2.11. The current case in Judge Ward's Court--

THE COURT: I assume, or I might have reason to believe that some of the rules he is attacking now were involved in the earlier case?

MR. TAYLOR: That's correct, your Honor.

THE COURT: Can't somebody give me the earlier case? You say it is reported in 369 Fed. Supplement 996.

MR. SLOAN: Two decisions, one in 9941 and 996.

THE COURT: To the best of your knowledge, Mr. Taylor, what were the provisions that were involved in the earlier case in which a permanent injunction was entered?

MR. TAYLOR: Rule 15(C)31, your Honor, which is the net capital rule; Rule 17(A)4, which requires broker-dealers in securities to maintain books and records.

THE COURT: All right. He is attacking in this action--I know he is attacking 15(C)31, isn't he?

MR. TAYLOR: Yes, your Honor.

THE COURT: Aren't you attacking 15(C)31 in this action, Mr. Sloan?

MR. SLOAN: Yes, your Honor, I think that is included, but I am taking the entire Securities Exchange Act of 1934.

THE COURT: But there is a little bit of difference in the entire act and specific--

MR. SLOAN: Yes, I believe that was mentioned in my complaint as one of the sections that I was attacking or the rules.

MR. TAYLOR: 15(C)31 is definitely in the present complaint.

THE COURT: And I think you may be talking about 17(A)5.

MR. TAYLOR: That's correct, in the second injunctive action before Judge Ward.

MR. SLOAN: Your Honor, 17(A)5 is not involved in any of the injunction actions.

THE COURT: Look at page 21 of your brief in this case, Mr. Taylor.

MR. TAYLOR: Your Honor, the plaintiff is

attacking 17(A)5 in this proceeding.

THE COURT: In this case.

MR. TAYLOR: We are not suing him on that.

THE COURT: And you are saying that it was 17(A)4 that was involved in the first action before Judge Ward.

MR. TAYLOR: Yes, your Honor.

THE COURT: All right. We will have that decision in a minute.

Now, the current action before Judge Ward involves what, Rule 17(A)5?

MR. TAYLOR: 17(A)4, 15(C)2.11.

THE COURT: What is Rule 17(A)4?

MR. TAYLOR: 17(A)4, your Honor, requires that a broker-dealer maintain books and records and keep them in an accessible place for inspection by the Commission.

THE COURT: The thrust of it is accessibility to inspection by the Commission, right?

MR. TAYLOR: Yes, your Honor.

MR. SLOAN: I just want to make one legal point. There is nothing in Rule 17(A)4 that requires that they be acceptable to the Commission.

THE COURT: We got it right here. We can

look.

Now, let's pass that for a minute. Rule 17(A)5 requires registration with the Commission in the filing of certain reports, right?

MR. TAYLOR: That's correct.

Your Honor, I wasn't involved in the trial, the enforcement. I am not sure whether 17(A)5 was involved here or not. Mr. Sloan can probably answer that.

THE COURT: We will get the decision.

Now, Rule 15(C)2.11 is the rule about--

MR. TAYLOR: The initiation of resumption of quotations in the quotation media.

THE COURT: It is the quotation rule. Okay. It provides for the conditions under which quotations can be made, is that basically it?

MR. TAYLOR: That's true, your Honor, and if a security has had interrupted rating in a certain period before the--

THE COURT: Well, you have it in the back of your brief. It talks about initiation or resumption of quotations. It isn't just about resumption, is it?

MR. TAYLOR: No, your Honor. Unless there has been consecutive quotation of the certain security for a certain number of days then you have to have certain

information involved to submit a quotation. So it could be the initiation or there had not been submissions before, or could be resumption where there had been an interruption of trade.

THE COURT: I thought it was just a general requirement about what information had to exist in order to make quotations.

MR. TAYLOR: I believe that's correct.

THE COURT: What is the problem in the case before Judge Ward is specifically related to information required for resumption of trading in a suspended security. Is that what you are saying?

MR. TAYLOR: Resumption of quotations.

THE COURT: Resumption of quotations.

MR. TAYLOR: Yes, your Honor.

THE COURT: Okay.

MR. TAYLOR: Now, Mr. Sloan submitted quotations for a number of securities in which there had been trading suspensions which would trigger the rule and require him to have certain information before his submission. He filed forms which plainly and willfully stated that he didn't have the information and apparently wasn't going to find out.

THE COURT: According to Judge Ward's decision--

MR. TAYLOR: I am sure that is a discovery motion.

THE COURT: --369 Fed. Supplement 996, which led to the permanent injunction, this sought relief alleging violations of Sections 15(B)1, 15(C)3 and 17(A) of the Exchange Act and Rules 15(C)31, 17(A)3 and 17(A)4, relating to broker-dealer registration, net capital and bookkeeping rules.

Now, in this action is there any attack on 17(A)3 or 17(A)4? I don't see any.

Okay, let's try to summarize this.

We have an SEC administrative proceeding in which an administrative judge has rendered an initial decision revoking Mr. Sloan's broker-dealer registration. Is that Mr. Sloan or Sloan & Company or both?

MR. TAYLOR: The registration is Samuel H. Sloan & Company, your Honor.

THE COURT: But it pertains to him individually?

MR. TAYLOR: Yes.

THE COURT: What rules or regulations or statutes were involved there?

B3 MR. TAYLOR: The injunction action, the initial injunctive action, net capital bookkeeping and registration violations.

MR. SLOAN: Your Honor, I think that the administrative proceeding relates to Rule 17(A)5 whereas the injunctive proceeding relates to 17(A)3 and 4, and both proceedings relate to 15(C)1.

THE COURT: Is that right?

MR. TAYLOR: That's correct, but there is something technically wrong with what has just been said. One of the grounds for the disciplinary proceeding was the injunction itself, so therefore all provisions involved in the injunction action--

THE COURT: When you say also involved 17(A)5--

MR. SLOAN: The administrative proceeding was directed towards 17(A)5, failure to file financial statements. The injunctive proceeding, I believe, if you read it, attacks 17(A)3 and 4. I don't know whether this is a deliberate decision by the Commission or whether it was just an inadvertent omission. I am inclined to believe it was the latter.

THE COURT: Okay. Now let's get this. What is 17(A)3?

MR. TAYLOR: Your Honor, it contains bookkeeping requirements for a broker-dealer who does business with an exchange member. It regulates members of the securities exchanges, broker-dealers who deal with those

exchanges. It requires that certain ledgers, books, records, stock transfer documents be maintained in order to do business.

THE COURT: Bookkeeping requirements for broker-dealers dealing with exchange members, right?

MR. TAYLOR: Yes, sir.

THE COURT: All right. 17(A)4 is what?

MR. TAYLOR: It deals with the preservation of records by exchange members and broker-dealers in securities. It goes to checkbooks, bills, trial balances and so forth.

THE COURT: And 17(A)5 is the requirement for financial statements, right?

MR. TAYLOR: Yes, your Honor. I want to stress about Rule 17(A)4, there is no question in the Commission's mind, and I don't think anyone else's, save Mr. Sloan, that the rule provides for examination by the Commission, and it says so in terms--it provides for Commission examination of those books and records.

Obviously it doesn't require that they be maintained in a vacuum without any regulatory examination.

THE COURT: They have to be filed, isn't that it?

MR. TAYLOR: Well, I am talking about 17(A)4,

your Honor, maintenance of books and records by broker-dealers.

THE COURT: Well, it provides--I have got it here--every member broker-dealer subject to this rule shall file reports of financial condition conveying the information required by a certain form.

MR. TAYLOR: Your Honor, I refer to the statute under which the rule was promulgated. It states that such documents, correspondence, memoranda, papers, books and other records shall be subject at any time or from time to time to such reasonable investigation...as the Commission may deem necessary or appropriate in public protection of investors.

And the rule itself, I believe, contains substantially, at least by implication states the Commission shall have access.

The rule provides, for example, that records may be maintained on microfilm, that the microfilm can be produced at all times.

THE COURT: I don't think it is a problem. It obviously would have to be accessible. It has to be filed, and it is available to the Commission.

MR. SLOAN: Your Honor, 17(A)5 requires that reports be filed. 17(A)4 requires that records be main-

tained in an easily accessible place.

THE COURT: You have told me that the SEC administrative proceeding raises all the regulations that were raised in the permanent injunction proceeding and also raises 17(A)5.

Now, assuming that, my question is has Mr. Sloan raised in that administrative proceeding the validity of those provisions?

Have you done that?

MR. SLOAN: At the time I was represented--at the time of the administrative hearing, I was represented by counsel, and he did not raise that argument.

THE COURT: Do you intend to raise--have you raised it or do you intend to raise it in those proceedings?

MR. SLOAN: No, the final briefs in that proceeding were filed in July of 1973, so it has been very close, little over a year and a half, since the briefs have been filed and the Commission has taken that length of time to make up its mind.

I wrote a letter to the Commission requesting that they consider the constitutionality of the rules.

Actually, this letter was written in early 1974, so whether they are going to consider my letter as

part of the record in the proceeding or not is anyone's guess. I would say the way these things go, chances are they will not consider it.

MR. TAYLOR: Your Honor, all the--

THE COURT: My point is simply this: I think if these matters are before administrative bodies or will be before Courts of Appeals or are before District Courts and will be before Courts of Appeals from those proceedings, then I should not be--that's where they are at, those questions.

MR. TAYLOR: All matters in the first injunctive action are in the Second Circuit now. Mr. Sloan has indicated he will raise all these constitutional questions with respect to the provisions there.

THE COURT: Did he raise them in the District Court?

MR. TAYLOR: It's in the record, your Honor. Judge Ward did not make a detailed analysis, as I think would be quite proper, because this kind of--

THE COURT: Did Mr. Sloan raise it?

MR. TAYLOR: Never raised or preserved this in my opinion, your Honor. The issues are raised in the--preserved in the Court of Appeals.

THE COURT: Are you raising it in the Court of

Appeals?

MR. SLOAN: Yes, your Honor, but I would like to point out that none of the facts which are involved in that litigation are involved in this lawsuit and--

THE COURT: Well, but the general claim about the invalidity of the regulations because they are too vague or they are an unconstitutional delegation of legislative power, that doesn't depend on any--that is a general attack.

Well, I think we have pursued this long enough and I will consider that.

Now, let me ask the SEC something else. You make a defense to the effect that the SEC has a sovereign immunity status and cannot be sued except under conditions set by Congress and Congress has not permitted the suit, right?

MR. TAYLOR: Your Honor, I think that goes to pleading technicality, actually. It is an anomoly argument. Mr. Sloan's pleading is defective in many ways, but in one respect he did not name individual commissioners.

THE COURT: In other words, if he had named the individual commissioners you would have not had that defense, right?

MR. TAYLOR: Your Honor, we are asserting the defense--it is always asserted on a matter such as this, when a Federal official is acting in a discretionary capacity. If the cause of action arises from the performance of discretionary duties there is a privilege against suit for damages.

So we have made that argument, treating the pleading charitably and assuming arguendo that the commissioners themselves have been sued, which they have not. It is a technical matter.

THE COURT: What about the suit for declaratory and injunctive relief? What I am leading up to is this: As far as the claim for declaratory and injunctive relief, is there any sovereign immunity ban to an action against the Commission claiming that a particular rule is unconstitutional? Do you get my question?

MR. TAYLOR: I understand the question, your Honor.

THE COURT: Okay.

MR. TAYLOR: I am not--well, I would say, then, that--

THE COURT: Just answer me.

MR. TAYLOR: Yes, your Honor. Congress has not provided means by which the Commission can be sued.

THE COURT: Look, let's assume that I have a valid claim that some SEC regulation is unconstitutional because it is indeed too vague or does something else that violates the constitution, so I want to bring a lawsuit, and I want to say the SEC and its commissioners have issued this unconstitutional regulation, and I want an injunction, and I want a declaration of its invalidity.

Now, can I not bring that suit against either the Commission or the commissioners or both? And I am not suing for damages. I just want the declaratory and injunctive relief.

MR. TAYLOR: Your Honor, there are two ways that I believe that could arise. It could arise in the context of an attempt by the Commission to enforce--there the questions can be litigated--or in the case where the Commission had not instituted enforcement proceeding.

I believe you would have to exhaust your administrative remedies prior to invoking the Courts. I can't cite the cases just this moment.

THE COURT: Do you have cases on that in your brief?

MR. TAYLOR: I am not sure if we briefed that particular point, your Honor.

THE COURT: Did the cases you have cited in

the early part of the brief deal solely with actions for damages?

MR. TAYLOR: With respect to the individual commissioners, yes, your Honor. I believe I have cited cases, though, which provide that where the Congress has provided a statutory review procedure, that review procedure is exclusive.

THE COURT: Is there a statutory review procedure claiming that rules are invalid? Is there a procedure for that?

MR. TAYLOR: On the present context, for example, we are--well, I believe you would have to go to the administrative agency and seek a hearing, get an order, and proceed to the Court of Appeals.

THE COURT: This was an awfully important part of your brief, and I don't know where we come out on it.

Let's just mention one of these provisions, 15(C)31, the net capital requirement. I am a broker-dealer. I can't meet it. I want to get somebody to--I have a bona fide claim. Assume that it is unconstitutional, it violates the statute.

Now, what do I do? Do you have anything on that in your brief?

You are telling me that he is taking the wrong route and I am asking you, have you got anything in your brief that explains that specifically?

MR. TAYLOR: Your Honor, I believe the Commission's position would be with respect to--

THE COURT: I am not asking you that. I want to know where in your brief--

MR. TAYLOR: I am not sure that question is specifically answered, your Honor.

MR. SLOAN: Your Honor, the fact is that there is--

THE COURT: I must say, Mr. Taylor, you have a passage beginning on page 8, "The action should be dismissed for lack of jurisdiction."

Then you have part (a), "The Commission, as an agency of the United States Government, may not be sued absent the consent of the Congress."

And then you have got a bunch of decisions.

Then you have got a part (b) about how the action will stand if the commissioners themselves were being sued.

MR. TAYLOR: For damages, your Honor.

THE COURT: But you don't limit it.

MR. TAYLOR: I believe I have limited it in

the text, your Honor, in sustaining document immunity from any money liability.

THE COURT: Okay. So none of that argument applies to the injunction.

MR. TAYLOR: That's correct, your Honor.

THE COURT: Okay. All right.

Well, all right now, what is your position as far as trying to get injunctive relief or declaratory judgment?

On the invalidity of a rule, what should a person do?

MR. TAYLOR: I would say, your Honor, that the appropriate route would be to comply with the law, your Honor, and test the constitutionality in the enforcement context.

THE COURT: Just so I understand, the points in your brief, I(a) on page 8 and I(b) on page 9, these sections of your brief apply only to the damage claims and not to the injunction and declaratory judgement claims, right?

MR. TAYLOR: Point (a), the technical argument, applies to everything. In other words, it is a technical matter. You have to name the members of the agency and not the agency itself.

THE COURT: In other words, if I wanted to sue, I could not sue the Commission to declare a rule of the Commission to be invalid.

MR. TAYLOR: That's correct, your Honor.

THE COURT: And the cases so hold or do they deal with the declaratory judgment and injunction?

MR. TAYLOR: Yes, your Honor, I believe that would apply across the board.

I realize that as a technical argument, it is made jurisdictionally.

THE COURT: The commissioners aren't defendants here.

MR. TAYLOR: I agree, your Honor. We have briefed the question of the commissioners being involved here simply because it is a technical matter.

I will say this is the second crack that Mr. Sloan has had to present the defective-free complaint, and I really don't think he should be given a third stab at it.

MR. SLOAN: I would just like to point out, the defendant United States of America, as the Securities and Exchange Commission, and the reason I included the caption in that form, a lawsuit should have been filed in this Court entitled plaintiffs versus United States of

America, as the Interstate Commerce Commission, so I would presume--

THE COURT: How did that action come out?

MR. SLOAN: I just saw the caption. I was looking over somebody's shoulder at the time.

MR. TAYLOR: The United States of America has not been served, your Honor.

THE COURT: Well, we have gone over the papers and I am prepared, subject to one or two things which I am checking now, to look at a couple of cases, but I am prepared to put my decision on the record.

I would like to know, my file is slightly incomplete in that I do not have a conformed copy of the order to show cause, which I believe I signed for Mr. Sloan bringing on a motion--

MR. SLOAN: I left it in chambers the day I served it on everybody. I gave it to your law clerk.

THE COURT: Can anyone help me and conform this? This is the temporary restraining order and order to show cause.

MR. BRANDT: Is that the one against the National Quotation Bureau, your Honor?

THE COURT: Yes, it is.

MR. BRANDT: I may have a copy here. There

are so many papers.

MR. SLOAN: Your Honor, I am somewhat embarrassed because I prepared a brief--in fact, I didn't finish having it typed.

THE COURT: Your deadline which we gave you for submitting papers was February 7th and I am not receiving papers now.

MR. SLOAN: Well, your Honor, the motion papers were about four inches thick; they were voluminous, and I did the best I could to answer. There was a 30-page brief by the NASD. There was a 26-page brief by the Securities and Exchange Commission. And there were affidavits and there was about a 200-page affidavit with exhibits submitted by the NASD, and with papers of this volume, particularly since I didn't receive it until the Monday after they were filed--so according to your ruling I only had from February 3rd until February 7th to submit opposing papers.

THE COURT: I didn't get any requests for an extension. If I had had a request for an extension I would have postponed this hearing and I got no request for an extension and I am not going to receive your papers.

MR. SLOAN: Your Honor, I would like to point out, when you set this down for a hearing you said it would

be a firm date, and I made a number of cross motions. I made a motion to disqualify counsel for the defendants, in particular on the grounds that Mr. Taylor is not a member of the Bar of this Court or, at least, that would seem to be the case according to the file in the clerk's office, and three of the other attorneys who appeared in this action are not member of the Bar of this Court, and in addition, that Mr. Brandt, concerning the National Quotation Bureau, was, in fact, the prosecuting attorney for the SEC in the initial injunctive proceeding that was brought against me, and on this and various other grounds I don't think his appearance is proper, and I believe that my motions were filed and served on a timely basis, and I ask that they be considered.

THE COURT: Well, they do not involve any problems, and I will consider those motions, but I am not going to receive them at this point. We have had a lawyer come up from Washington. We are ready for oral argument and I am ready to decide this action. I am not prepared to receive any further papers by you at this moment. That's that.

Let me put my decision on the record on the various motions I have before me.

U.S. DISTRICT COURT FILED APR 23 1975 S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SAMUEL H. SLOAN and SAMUEL H. SLOAN, & Co.,

Plaintiffs,

vs.

74 Civ. 2792

SECURITIES AND EXCHANGE COMMISSION, UNITED STATES OF AMERICA, as the SECURITIES AND EXCHANGE COMMISSION, NATIONAL QUOTATION BUREAU, BUNKER RAMO CORPORATION, NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., DISCLOSURE, INC., and NATIONAL CLEANING CORPORATION,

Defendants.

BEFORE: HON. THOMAS P. GRIESA, D. J.

February 14, 1975
4:30 P. M. - Room 129

APPEARANCES:

SAMUEL H. SLOAN, pro se.

SECURITIES & EXCHANGE COMMISION
THOMAS L. TAYLOR, III, ESQ., Of Counsel.

ROGERS & WELLS, ESQS.,
Attorneys for Defendant National Quotation Bureau,
BY: GEORGE W. BRANDT, JR., ESQ., Of Counsel.

ROBERT J. WOLDOW, ESQ.,
Vice President & General Counsel,
National Clearing Corporation,
and
BREED ABBOTT & MORGAN, ESQ.
BY: RICHARD LYON, ESQ., Of Counsel.

WILLKIE, FARR & GALLAGHER, ESQS.,
Attorneys for Defendant Disclosure, Inc.
BY: PATRICIA WILLIAMS, ESQ., Of Counsel.

DECISION

(THOMAS P. GRIESA, D.J.)

This is an action by Samuel H. Sloan and Samuel H. Sloan and Co., a sole proprietorship, against the SEC, the National Quotation Bureau, Inc., the National Association of Securities Dealers, Inc., Bunker Ramo Corporation, National Clearing Corporation and an entity named as Disclosure Inc.

The caption also names as a defendant the United States of America as the Securities and Exchange Commission, although it appears that the United States of America has not been served.

The complaint originally filed in this action was dismissed by me on September 18, 1974, with leave to replead. An amended complaint was subsequently filed and there are numerous motions addressed to it now.

Let me briefly summarize the motions.

On January 10, 1975, I signed an order to show cause for the plaintiff, bringing on an application by the plaintiff for a preliminary injunction to require the National Quotation Bureau to list plaintiff in the so-called pink sheets and yellow sheets.

On January 31, 1975, the SEC filed a motion to dismiss the amended complaint. On the same date, the NATIONAL Association of Securities Dealers, Bunker Ramo Corporation and

National Clearing Corporation, filed a motion to dismiss the complaint.

On February 3, 1975, the National Quotation Bureau, Inc., filed a motion to dismiss the complaint.

On February 5, 1975, the plaintiff filed a motion seeking three forms of relief: First, the plaintiff sought a preliminary and permanent injunction enjoining the SEC from instituting and prosecuting actions for injunctive relief, from promulgating and enforcing rules and regulations, from conducting investigations and from undertaking any acts or practices under color of the Securities and Exchange Act of 1934 or rules or regulations promulgated thereunder. The asserted ground for this broad request for relief was that the existence of the Securities and Exchange Commission is repugnant to the constitution.

Second, plaintiff asked summary judgment on the amended complaint.

Third, plaintiff requested the convening of a three-judge court.

On February 7, 1975, the plaintiff filed a motion to disqualify certain persons -- Dennis C. Hensley, Lloyd J. Derrickson and Robert Waldow -- from acting as attorneys for Bunker Ramo Corporation, National Association of Securities Dealers and National Clearing Corporation.

There was also a request to disqualify George W. Brandt, Jr. as acting as counsel for National Quotation Bureau.

There was also a request for an order directing the office of the United States Attorney to appear on behalf of the United States of America or for a default judgment against the United States.

On February 13, 1975, the plaintiff filed a motion to disqualify Thomas L. Taylor, III, from appearing as counsel for the Securities and Exchange Commission.

I am denying the plaintiffs' applications in toto and I am granting the motions of the SEC, National Association of Securities Dealers, National Clearing Corporation, Bunker Ramo and National Quotation Bureau to dismiss the complaint.

After I get through stating my decision and reasons on the above motions, I will deal with the posture of Disclosure Inc., as to whom there is no formal motion before me at this time.

The basic thrust of the action is that plaintiff challenges the constitutionality of the Securities Exchange Act of 1934, challenges the existence of the Securities and Exchange Commission and the constitutionality of all rules and regulations promulgated by that body.

The plaintiff is engaged in combat with the SEC,

which has taken a number of channels, of which this action is only one.

As we have discussed this afternoon, the SEC is engaged in an administrative proceeding against plaintiff Sloan and his company to revoke his broker-dealer registration. Although the papers are at here, it is represented to me that the claim is that the plaintiff has violated the net capital requirements of SEC Rule 15c3-1, and that he has also violated the informational requirements of Rules 17a-3, 17a-4 and 17a-5.

The SEC has also sued Sloan and Company in an action which was assigned to Judge Ward of this court and in which a permanent injunction was entered, requiring plaintiff to desist from acting as a broker-dealer in violation of Rules 17a-3, 17a-4 and 15c3-1. The number of the case is 71 Civil 2695, and is reported as SEC v Sloan et al., 369 Fed. Supplement 996 (SDNY 1974).

I am advised that Sloan has appealed from the administrative judge's initial decision in the SEC proceeding revoking his broker-dealer registration and that he has also appealed from the permanent injunction granted by Judge Ward in the case in this court.

There is a second action before Judge Ward now pending which involves questions of violations of Rules 17a-4 and 15c2-11, the latter dealing with the making of quotations.

There a preliminary injunction has been entered against plaintiff.

As I indicated, the basic claim in the case befor me is that the Securities Exchange Act of 1934 and the SEC rules issued thereunder are unconstitutional. The claim is that there is an unconstitutional delegation of power to the SEC and that the Exchange Act and Rules are unconstitutionally vague and deprive the plaintiff of liberty and property without due process of law and violate his right to contract.

There are specific attacks made upon specific provisions of the statute and specific SEC rules. Particularly, it is claimed that the statutory provisions of the 1934 Act providing for suspension by the SEC of trading in securities are unconstitutional. These sections are 15(c)5 and 19(a)4, which give the Securities and Exchange Commission the authority to suspend the trading in a security for a period not exceeding 10 days, if such suspension in the opinion of the Commission is in the public interest and the protection of investors so requires. There is also an attack upon Section 12(g) of the 1934 Act and the rules thereunder for filing Form 10-K and other forms with the SEC.

Three SEC rules are also specifically attacked in the action, that is Rule 1/a-5, which I referred to

earlier, Rule 15c2-11, and Rule 15c3-1. Rule 17a-5 provides for the filing of certain financial statements by broker-dealers and Rule 15c2-11 places certain conditions on the ability of a broker-dealer to publish a quotation for a security, that is, before a quotation can be published by a broker-dealer, the issuer of the security must have on file the necessary registration statement and so forth. Rule 15c3-1 is the net capital rule.

As far as the general attack upon the Exchange Act of 1934 and the general attack upon the existence of the SEC and the ability of the SEC to promulgate rules and regulations regarding the securities business, the matter has been for so long and so conclusively established against the plaintiff's position that further discussion is unnecessary.

With regard to the specific statutory sections and specific SEC rules referred to in this action, some further brief mention is necessary. These are Sections 15(c)(5) and 19(a)(4) and 12(g) and Rules 15c2-11, 15c3-1 and 17a-5. No cogent reason has even been suggested for the invalidity of these provisions. As already indicated, the arguments about improper delegation of power to the SEC are long since foreclosed. The arguments about unconstitutional vagueness are patently frivolous in the case of the rules referred to, and, in the case of the suspension of trading sections of the

statute, are foreclosed by analogous case law. Wright v. SEC, 112 F. 2d 89, 94-95 (2d Cir. 1940), and American Sumatra Tobacco Corp., 110 F. 2d 117 (D.C. Cir. 1940). Plaintiff, not being an issuer of securities has no standing to attack Exchange Act 12(g) or the rules thereunder.

Certain other elements of the action do require discussion, and for this purpose a brief factual introduction is required.

Plaintiff apparently is suing in this action primarily as a market-maker for over-the-counter stocks. Although his complaint is long and contains much irrelevant matter, it seems to me that the basic thrust of the complaint can be summarized as follows:

He complains that as a market-maker he is impaired because he is not able to participate in bidding on the electronic bidding process provided for by what is known as NASDAQ.

To back up a moment, one of the defendants is the well known NASD, which is an association of securities dealers who trade in over-the-counter stocks, and this association exists under the authority of Section 15A of the Exchange Act of 1934.

Section 15A is the so-called Maloney Act. In order to provide for the handling of quotations and bidding

between the dealers, by use of electronic technology, the NASD has contracted with defendant Bunker Ramo to set up the system known as the NASDAQ.

Under the applicable rules, the only people who can participate on the NASDAQ in the sense of bidding through this device are members of the NASD. The plaintiff is not a member of the NASD. It is stated in the complaint that he does not want to become a member of the NASD and the reason he does not want to do this is because he objects to the requirement of the NASD that its members agree to arbitration of disputes among themselves and with customers.

Another complaint which the plaintiff has about the NASDAQ is that it is too expensive for smaller traders such as himself. Here he makes an antitrust claim against Bunker Ramo and the NASD, claiming price fixing and monopolization.

Another basic branch of the plaintiff's complaint is the claim that he has lost in various ways because many of the stocks in which he has been a market-maker or been otherwise interested, many of these stocks have been suspended from trading by the SEC under the statutory provisions which I have referred to earlier.

Another phase of the complaint is a claim against the National Quotation Bureau. The National Quotation Bureau is basically a publication service which puts out the so-called pink sheets and yellow sheets which contain quotations for over-the-counter stocks and bonds. This was the system which was apparently universally relied on in the over-the-counter market prior to the time when the electronic bidding process of the NASDAQ came into being. Apparently there are still some securities which are referred to in the pink or yellow sheets which are not carried on the electronic device. In any event, since plaintiff is not a bidder on the electronic device, he seeks to use the pink sheets and he claims that he has a grievance against the Quotation Bureau respecting the pink sheets. He claims that he was kept off of the pink sheets for a time for failure to pay a bill of $1700 to the National Quotation Bureau, but concedes that subsequently he was reinstated in the pink sheets upon payment of the amount due.

He has a current problem about the pink sheets because Judge Ward in a current litigation against plaintiff has preliminarily enjoined plaintiff from making quotations under certain circumstances and this prevents the plaintiff from utilizing the pink sheets for quotations.

Plaintiff concedes that he is now restrained by Judge Ward's order from initiating over-the-counter quotations on the pink sheets, but he claims the right to have particular securities and his name listed on the pink sheets without quotations.

In addition to the above clims which I have discussed, plaintiff lists a number of specific grievances alleged against the SEC.

For instance, it is claimed that the SEC or investigators for the SEC questioned the plaintiff's secretary, the plaintiff's mother, and a former employee of the plaintiff.

None of these claims are sufficient, and the complaint must be dismissed.

The claim against the NASD and Bunker Ramo regarding the NASDAQ is legally invalid.

From the allegations in the complaint and the other papers before me, it appears clear that what plaintiff is complaining about regarding the requirements for participation in the NASDAQ and the fixing of charges for the usage of the NASDAQ are matters stemming from NASD rules and regulations promulgated under the Maloney Act.

There is a specific provision for challenging such rules and regulations by resort to the SEC and by

further resort to the Court of Appeals. Exchange Act, Section 15A(a) et seq; Section 15A(k), Section 25.

If plaintiff indeed has a valid claim on these matters, his remedy is with the SEC and in the Court of Appeals. In such a proceeding, the SEC and the Court of Appeals would be empowered to take competitive considerations, among other things, into account. Exchange Act Section 15A(b) (8). Antitrust claims of the kind brought by plaintiff will not lie, Exchange Act Section 15A(n). See also Ricci v. Chicago Mercantile Exchange, 409 U.S. 289, 302-303, note 13 (1973).

The claim for losses from suspension of trading is covered by my earlier discussion as to the validity of the statutory provisions governing such suspension. There is nothing from which a case could be made out that the SEC's actions were not within the statutory authorization. Indeed it is alleged that in most cases the SEC suspends trading of securities because of the failure of the issuer to file and keep the necessary financial records.

The claim relating to the National Quotation Bureau is patently frivolous. There was a temporary inability to participate on the pink sheets because of non-payment of bills. Apparently the bills were paid. The only claim currently pending or currently made in this action is the

refusal of the Quotation Bureau to carry lists of securities and carry plaintiff's name without the quotations. There is no merit whatsoever in such a claim.

With regard to the various allegations about SEC investigative activities, etc., these are little more than narrative coloration. They offer nothing sufficient in the way of allegations of wrongdoing, or resultant injury to plaintiff.

One further matter which should be covered relates to the defendant National Clearing Corporation. The National Clearing Corporation is a body set up under auspices of the NASA to efficiently handle the clearing of securities transactions in over-the-counter securities. It appears that plaintiff is not a member of the NCC because he is not a member of the NASD and that NASD membership is indeed required for participation and membership in the NCC. Again, this is a matter of NASD rules and if the plaintiff wants to challenge those rules, his remedy is with the SEC and in the Court of Appeals, not in an action in this court.

I should also note that Count IV of the complaint asserts a particularly irrational claim against certain defendants under Section 10(b) of the 1934 Act and Rule 10b-5. This merits no discussion.

Now, I think that disposes of all the motions that I have referred to and that leaves only the status of Disclosure, Inc.

What do we do about them?

MS. WILLIAMS: Your Honor, Disclosure, Inc. is sued in this matter as a sort of a tag-along party. We are named in precisely six paragraphs of the 309 in the complaint, four of which are the only ones which could be deemed to be concerned with substantive allegations.

We are sued under Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

THE COURT: What is Disclosure, Inc.

MS. WILLIAMS: Disclosure, Inc. is a private corporation which performs duplicating services of various and sundry documents.

THE COURT: For whom?

MS. WILLIAMS: For the public as well as for the SEC. It holds a contract.

THE COURT: Am I correct, if you want to get documents on file with the SEC, you apply to the SEC and then Disclosure, Inc. does the work; they do the duplicating?

MS. WILLIAMS: Disclosure, Inc. will do duplicating and the SEC also itself provides machines in its offices,

public machines for duplicating materials.

THE COURT: Where are you referred to in the complaint?

MS. WILLIAMS: Paragraphs 11, 213 through 215, 290 and 297. The substantive paragraphs are 213 through 215 and initial paragraph 11. They are on pages 27, 28, 36 38 and page 3.

THE COURT: Is it a claim of excessive rate?

MR. WILLIAMS: Yes, sir.

THE COURT: What is the rate?

MS. WILLIAMS: 15 cents per page.

THE COURT: That's frivolous. I'm simply going to dismiss it.

All right. Thank you very mucy.

MR. SLOAN: Your Honor, there was one motion, my motion for disqualification of Mr. Taylor, not being a member of the bar of this court.

THE COURT: I have denied all of those disqualification motions. There is no discussion necessary. Those are absolutely frivolous.

I wish to make it clear that I am dismissing this complaint without leave to replead. There has been

one opportunity to replead and no further opportunity will be granted.

All motions will be endorsed in accordance with this decision.

I (We) hereby certify that the foregoing is a true and accurate transcript, to the best of my (our) skill and ability, from my (our) stenographic notes of this proceeding.

John H. Knuppel

Official Court Reporter
U. S. District Court

EXHIBIT A

SECURITIES AND EXCHANGE COMMISSION
Washington, D. C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 11376/April 28, 1975

Admin. Proc. File No. 3-3680

In the Matter of	:
	:
SAMUEL H. SLOAN	:
doing business as	:
SAMUEL H. SLOAN & CO.	:
120 Liberty Street	:
New York, New York	:
(8-15750)	:

FINDINGS AND OPINION OF THE COMMISSION

BROKER-DEALER PROCEEDINGS

Grounds for Remedial Action

Where registered broker-dealer willfully violated Exchange Act's recordkeeping, net capital and reporting provisions and had also been enjoined from violating certain of those provisions as well as those requiring that records be made available for examination by Commission representatives and precluding the initiation of quotations without specified information, held, public interest requires revocation of broker-dealer registration, and bar of sole proprietor from association with any broker-dealer.

APPEARANCES:

Robert W. Taylor for Samuel H. Sloan, doing business as Samuel H. Sloan & Co.; and Samuel H. Sloan, pro se.

William D. Moran, William Nortman, Thomas R. Beirne, Alan M. Rashes and Jerome M. Selvers, for the Division of Enforcement of the Commission.

I. BACKGROUND

This case deals with the back office operations of a small securities firm in New York City. Finding serious deficiencies in those operations and an injunction based thereon, the administrative law judge revoked the broker-dealer registration of Samuel H. Sloan & Co. ("registrant"), and barred Samuel H. Sloan, registrant's sole proprietor, from association with any broker or dealer. 1/ Respondent's petition for review of that decision brings the case to us. 2/

1/ Registrant became registered with us in May 1970 as a partnership consisting of Sloan and another person. The other partner withdrew from the firm in January 1971, making Sloan its sole proprietor. Sloan thereafter sought to have registrant registered as a sole proprietorship, but this was not accomplished because of defective filings. Hence registrant is still carried on our records as a partnership although now wholly owned by Sloan. Accordingly, we shall for present purposes treat registrant as a sole proprietorship.

2/ Briefs were filed with us by respondent and our Division of Enforcement. Our findings are based upon an independent review of the record.

This administrative proceeding is closely intertwined with a judicial one. On our complaint, the United States District Court for the Southern District of New York preliminarily enjoined respondent on June 24, 1971, with his consent, from effecting transactions while registrant was not in compliance with the recordkeeping and net capital provisions under the Securities Exchange Act. 3/ Thereafter the instant proceeding was instituted. It was based on the preliminary injunction and on specified violations, most of which had also been alleged in the injunctive action. 4/ Following the issuance of the administrative law judge's initial decision which took cognizance of the preliminary injunction, the court in January 1974, after a trial, entered a permanent injunction. 5/

II. RECORDKEEPING VIOLATIONS

We find, as did the administrative law judge, that registrant willfully violated the recordkeeping provisions of Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. 6/ A broker-dealer inspection conducted by our staff in January 1971 (about eight months after registrant's registration became effective) revealed various infractions in this area. Following such inspection, registrant was kept under close surveillance with frequent visits being made by our staff from January to August 1971.

The initial inspection disclosed, among other things, that capital, income and expense items were not properly recorded in registrant's general ledger; that the stock record was not kept current; that there was no account record of bank balances; and that no trial balance had been prepared. Stating that the inspection showed that respondent's records did not comply with our requirements and afforded no basis for establishing his financial position, our staff asked Sloan to produce a trial balance and other data. He furnished something. But no capital computation could be made from what he submitted.

3/ S.E.C. v. Sloan, 71 Civil 2695. Respondent consented to the entry of the preliminary injunction, without either admitting or denying the allegations in our complaint.

4/ The Securities Exchange Act (Sections 15(b)(5) and (7)) authorizes us to impose remedial sanctions if we find it in the public interest to do so and that any respondent (1) is permanently or temporarily enjoined by any court from engaging in any conduct in connection with broker-dealer activities or the purchase or sale of securities, or (2) has willfully violated any provision of the Exchange Act or rules thereunder.

5/ Sloan's appeal from the permanent injunction was dismissed for want of prosecution on March 27, 1975. S.E.C. v. Sloan, Docket No. 74-1436 (C.A. 2).

6/ The administrative law judge also found willful violations of the record-preservation provisions of our Rule 17a-4 under Section 17(a). We do not agree. We do not consider that the failure to preserve records, as required by Rule 17a-4, constitutes a separate and additional infraction once a violation has been found based upon a failure to make those same records, as required by Rule 17a-3. L. C. Fisher Company, Inc., Securities Exchange Act Release No. 10259 (June 29, 1973), 2 SEC Docket 81.

A subsequent examination was made on February 25. It disclosed that the stock record and customer ledger were not up-to-date, and that the income and expense account was not properly maintained. A March 19 examination revealed a capital contribution on the books of $58,175 when, in fact, no such contribution had been made.

On April 8 our investigator was once more in respondent's office. But he could not conduct an examination. According to him, Sloan said "he had no books, per se" -- all he had were debit and credit slips pending the receipt of "machine runs" from a bookkeeping service that used the slips to produce his records. From those slips our investigator was unable to prepare a trial balance. Having received the March 31 trial balance eleven days after his April 8 request for it, he returned to registrant's office on May 6 to verify it. But he could not do so. He was unable to obtain the stock record and daily blotter. On August 10 he went to registrant's office to make an inspection. But the books were unavailable. 7/ When he was able to make an inspection two days later, he found the general ledger posted only through July 31.

The foregoing chronicle shows extensive and persistent recordkeeping deficiencies during the first eight months of 1971. 8/ Moreover, computations of net capital during that year were not prepared as required. 9/ And our staff generally had to make about two or three requests for each trial balance it obtained from registrant. 10/

III. NET CAPITAL VIOLATIONS

We find, as did the administrative judge, that registrant willfully violated Section 15(c)(3) of the Exchange Act and Rule 15c3-1 thereunder by effecting securities transactions and attempting to induce them when registrant's aggregate indebtedness exceeded 2,000% of registrant's net capital.

Net capital deficiencies ranging from $718 to $70,064 were found by the administrative judge on ten dates in 1971 and on an eleventh date in January of 1972. 11/ And respondent does not challenge those findings.

7/ Our inspector testified he was told respondent's accountant had them.

8/ Sloan's claim that he gave our staff certain papers (a deposit slip, a trial balance, and a stock record) has no bearing on these deficiencies.

9/ Net capital computations, as well as trial balances, are required by Rule 17a-3(11) to be "prepared currently at least once a month."

10/ Ultimately, however, it obtained almost all of the trial balances it requested.

11/ He found the following deficiencies on the dates set forth below:

1971	
Jan. 18	$28,016
Jan. 29	11,912
Feb. 26	15,961
June 30	19,222
July 31	70,064
Aug. 31	15,789
Sept. 30	10,729
Oct. 8	$7,545
Nov. 30	4,010
Dec. 31	4,557
1972	
Jan. 31	718

What he attacks is the administrative judge's finding that he engaged in so-called "new" business from the end of July to September. He claims that such business as he did in that period consisted entirely of liquidating his long positions and covering his short positions. That, he says, was permissible under an agreement that he had reached with our staff on July 28, which allowed him to close out existing positions but precluded him from conducting new business.

But Sloan's own testimony shows that he engaged in the securities business in the usual unrestricted sense from January to July 28, 1971. And in January of 1972 he inserted quotations for various securities in the sheets published by the National Quotation Bureau, Inc. In view of registrant's net capital deficiencies in January, February, June and July, 1971, 12/ and in January of 1972, during those periods registrant clearly violated the Exchange Act's net capital requirements. 13/ It is equally clear that those violations were willful 14/ as that term is used for Exchange Act purposes. 15/

IV. NONCOMPLIANCE WITH REPORTING REQUIREMENTS

Respondent's Rule 17a-5 report of financial condition for 1970 and his report of income and expenses under Rule 17a-10 for the same year were admittedly filed late. 16/ Hence registrant willfully violated

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12/ Respondent admits that his net capital was deficient during this period. He states that under his July 28 agreement with our staff "he was to be permitted to correct his ... net capital deficiencies by conducting a limited securities business." (Emphasis added.)

13/ Section 15(c)(3) prohibits a broker-dealer not only from effecting transactions, but from attempting to induce them, in contravention of our rules. Hence a securities dealer whose net capital is deficient is barred from inserting quotations in the sheets.

14/ An act is "willful" within the meaning of that word as used in Section 15(b) of the Exchange Act even if the actor does not intend to violate the law. The act which constitutes the violation is "willful" whenever the actor intends to do that which he did. Tager v. S.E.C., 344 F.2d 5, 8 (1965); Gearhart & Otis, Inc. v. S.E.C., 348 F.2d 798, 802-3 (1965).

15/ We think it unnecessary to reach certain other net capital infractions alleged in the order for proceedings and found by the administrative judge.

16/ Under Rule 17a-5, as then in effect, a broker-dealer was required to file his report of financial condition not more than 45 days after the date of the report. The rule further specified that the date of his first report should be from one to five months after his registration became effective. Since registrant became registered on May 10, 1970, he was required to file his report by November 1970. But he himself says it was not filed until March 1971.

Rule 17a-10 requires that a report of income and expenses and related information be filed not later than 120 days after the close of the calendar year. Although it was required to be filed by April 1971, respondent says he did not do so until December 1971.

Section 17(a) of the Exchange Act and Rules 17a-5 and 17a-10. 17/

V. INJUNCTION

As noted at the outset, the preliminary injunction on which this proceeding was initially based has now become permanent. The permanent injunction, unlike the preliminary one, was entered after a trial. On the basis of the evidentiary record before it, the court found willful violations of our recordkeeping and net capital provisions, in a number of instances the same or substantially the same as those that we have found on the basis of the record before us. 18/ Those judicial findings show a continual pattern of recordkeeping and net capital violations including some between May 1973 and January 1974, a period subsequent to that involved in these proceedings. 19/

VI. OTHER MATTERS

Sloan says that institution of the earlier injunctive action constituted an election by us of the forum in which to proceed against him. 20/ That is not so. 21/ The Exchange Act provides several parallel and compatible procedures for the attainment of its objectives, and resort to one avenue does not preclude the use of another. 22/ The injunctive and administrative remedies serve different purposes, one restrains further violative

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17/ Registrant also willfully violated Section 17(a) of the Exchange Act and our Rule 17a-11 thereunder from September 15, 1971 (the date on which that rule went into effect) until January of 1972. That rule requires that a broker-dealer give the Commission telegraphic notice of his net capital deficiency on the day it occurs and, within 24 hours, file a report of financial condition. The administrative judge found that registrant never furnished any such notice or report. And no exception has been taken to this finding.

18/ 369 F. Supp. 996 (1974).

19/ Among other things, the court found that since August 1973 (the opinion issued in January 1974) respondent had not made his books and records available for inspection by our staff, "although numerous efforts were made by the Commission to arrange such an inspection." It also found net capital violations in May and August 1973.

20/ He also asserts that attorneys on our staff engaged in unprofessional conduct. But most of these charges relate to the injunctive proceedings. Hence they are irrelevant here. Nothing has been alleged that goes to the merits of the matter before us.

21/ Kamen & Company, 43 S.E.C. 97, 108 n. 17 (1966); A. G. Bellin Securities Corp., 39 S.E.C. 178, 186 (1959). See also Lile & Co., Inc., 42 S.E.C. 664, 670 (1965). Compare United States v. Kordell, 397 U.S. 1, 11 (1970): "It would stultify enforcement of federal law to require a governmental agency ... invariably to choose either to forgo recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the ultimate outcome of a criminal trial."

22/ See Clinton Engines Corporation, 41 S.E.C. 408, 412-413 (1963); A. J. White & Co., Securities Exchange Act Release No. 10645 (February 15, 1974), 3 SEC Docket 550.

activity, the other seeks to determine whether it is in the public interest to exclude somebody from the securities business or to limit his activities in it. Far from being a barrier to administrative action, an injunction is an express and distinct ground for such action. 23/

VII. PUBLIC INTEREST

Respondent argues that the revocation and the bar imposed by the administrative judge are excessive and unwarranted. We disagree. 24/ Sloan's

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23/ Sections 15(b)(5) and (7) of the Exchange Act summarized in n. 4, supra.

Respondent argues that the text of the Exchange Act is of no moment because the whole thing is unconstitutional. It is not for us to pass on that. Having been instructed by Congress to administer the Act, we are constrained to assume that statute is valid unless and until the courts hold otherwise. See Milton J. Wallace, Securities Exchange Act Release No. 11252 (February 14, 1975), 6 SEC Docket 300, 301; Mutual Fund Distributors, Inc., 41 S.E.C. 174, 181 (1962); Walston & Co., 5 S.E.C. 112, 113 (1939). Nevertheless, we think it appropriate to note that respondent's constitutional contentions are nothing less than an attack on all federal administrative law since they assume that Congress cannot vest this and other federal agencies with quasi-legislative and quasi-judicial powers, and that respondent cites nothing (other than his own ideas about the Constitution) in support of this radical position. We also note that the Supreme Court seems to take a different view. See Butz v. Glover, 411 U.S. 182 (1973) where the court cited with approval Hiller v. S.E.C., 429 F.2d 856, 858-859 (C.A. 2, 1970) and Dlugash v. S.E.C., 373 F.2d 107, 110 (C.A. 2, 1967). 411 U.S. at 187.

24/ Respondent says that he rejected a settlement calling for a 60-day suspension suggested by our staff prior to the hearings. But the asserted willingness of our staff to recommend that we accept a 60-day suspension for purposes of settlement (only we, not our staff, can accept an offer of settlement -- see Rule 8(a) of our Rules of Practice) is irrelevant. As we said in Haight & Company, 44 S.E.C. 481, 512-513 (1971), affirmed without opinion (C.A.D.C. June 30, 1971): "In settlement cases, where as a rule there is no admission of violations, we take into account pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings." Here, however, the record before us is fully developed. And it establishes various violations. Cf. Security Planners Associates, Inc., 44 S.E.C. 738, 743-744 (1971). Sloan's idea that a settlement proposal by our staff sets some sort of a ceiling on the sanction that can be imposed after a record has been developed is fallacious. Such a rule would undermine the settlement process that the Administrative Procedure Act seeks to encourage. That statute provides that "The agency shall give all interested parties opportunity for - (1) the submission and consideration of ... offers of settlement, or proposals of adjustment. ..." 5 U.S.C. § 554 (c). See also First Detroit Securities Corporation, Securities Exchange Act Release No. 10706 (March 27, 1974), 3 SEC Docket 752, 753. If respondents were assured that a trial could never result in a sanction more severe than the one suggested by our staff in settlement discussions, they would have little, if any, incentive to settle. And even if we were otherwise inclined to give some slight weight to an abortive settlement proposal made by our staff, we could not properly do so in this case. Here we have facts and circumstances before us that were unknown to and could not possibly have been foreseen by our staff at the time of the settlement talks.

violations are neither trivial nor technical. They involve flagrant and long-continued breaches of significant duties imposed on persons in the securities business. 25/

Hence we find, as did the administrative judge, that it is in the public interest to revoke registrant's broker-dealer registration 26/ and to bar Sloan himself from association with any broker or dealer. In arriving at that conclusion we have given some weight to the fact that in January of this year Sloan was again enjoined on our complaint. That second injunction:

> (A) Restrains Sloan from removing, destroying, or altering the books and records required by Section 17(a) of the Exchange Act and our rules thereunder;
>
> (B) Orders him to permit our staff to make an immediate examination of those records in an easily accessible place; and
>
> (C) Restrains him from initiating quotations for over-the-counter securities when he lacks the information required by our Rule 15c2-11 under Section 15(c)(2) of the Exchange Act. 27/

Sloan's own papers in the second injunctive suit show his continuing disposition to disregard or defy the rules governing registered broker-dealers. He glories in having submitted "more than 350" quotation applications "in the face of an admonition by the S.E.C. that the submission of these forms constituted a violation of its rules." And in an affidavit submitted to the Court of Appeals he has said:

> "I do not intend to comply with the ... injunctive order. I am sure that both Judge Ward [the district judge] and the S.E.C. realize that this is the case. However, I would much prefer to have this matter decided

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25/ See Blaise D'Antoni Associates, Inc. v. S.E.C., 289 F.2d 276, 277, (C.A. 5, 1961) ("The net capital rule is one of the most important weapons in the Commission's arsenal to protect investors."); Fox Securities Company, Inc., Securities Exchange Act Release No. 10475, 2 SEC Docket 667, 669 (November 1, 1973) ("accurate and current records are essential to enable a broker-dealer to determine compliance with the net capital and other requirements."); Wanda O. Olds, 37 S.E.C. 23, 26 (1956) ("The requirements that books be kept current and financial reports be filed on time and in proper form are important"); Scientific Investors Corporation, 41 S.E.C. 618, 619 (1963) ("Reports are important not only to inform investors but because they may open avenues of inquiry which may well lead to collateral information having a direct bearing upon the broker-dealer's compliance with other rules of the Commission).

26/ We therefore deny his request for withdrawal of registrant's broker-dealer registration.

27/ S.E.C. v. Sloan, 74 Civil 5729 (U.S.D.C., S.D.N.Y.). Sloan's appeal from the second injunction is pending before the United States Court of Appeals for the Second Circuit. Yet the fact remains that a court of competent jurisdiction found the second injunction appropriate and that it did so over Sloan's vehement opposition. That is a circumstance to be considered in assessing the requirements of the public interest. Compare Summit Equities Corp., Securities Exchange Act Release No. 10366 (August 28, 1973), 2 SEC Docket 347.

> ... quickly so as to reduce the likelihood that I will actually be held in contempt. ... Clearly, if I am actually held in contempt, I will suffer irreparable harm." 28/

An appropriate order will issue.

By the Commission (Chairman GARRETT and Commissioners LOOMIS, EVANS and SOMMER); Commissioner POLLACK not participating.

George A. Fitzsimmons
Secretary

28/ The affidavit in which this statement appears was made in support of Sloan's unsuccessful application for a stay of the second injunction. Sloan's earlier petition to the Court of Appeals for a writ of mandamus against the district judge is in the same vein. After stating that "the S.E.C. has known ... that the petitioner was not going to make his books and records readily available," he goes on to say: "It is no secret that the petitioner has not paid ... any ... S.E.C. assessment in more than two years. It is no secret that the petitioner has not filed any financial statements with the S.E.C. for two years."

A323

34-11376

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 11376/April 28, 1975

Admin. Proc. File No. 3-3680

In the Matter of	:
	:
SAMUEL H. SLOAN	:
doing business as	:
SAMUEL H. SLOAN & CO.	:
120 Liberty Street	:
New York, New York	:
(8-15750)	:

ORDER IMPOSING REMEDIAL SANCTIONS

Proceedings were instituted under the Securities Exchange Act to determine what, if any, remedial action is appropriate in the public interest with respect to Samuel H. Sloan, doing business as Samuel H. Sloan & Co.

Hearings were held before an administrative law judge. He submitted an initial decision. Respondent's petition for review was granted, and briefs were filed by him and by the Commission's Division of Enforcement. Respondent requested withdrawal of the broker-dealer registration of Samuel H. Sloan & Co.

The Commission has this day issued its Findings and Opinion. On the basis of such Findings and Opinion, it is

ORDERED that the request for withdrawal of the registration of Samuel H. Sloan & Co. as a broker and dealer be, and it hereby is, denied; and it is further

ORDERED that the aforesaid broker-dealer registration be, and it hereby is, revoked; and it is further

ORDERED that Samuel H. Sloan be, and he hereby is, barred from being associated with any broker or dealer.

By the Commission.

George A. Fitzsimmons

George A. Fitzsimmons
Secretary

SLOAN Sloan v. SEC Docket no. 75-7283

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 25 day of Sept. , 1975 deponent served the within Joint Appendix upon

Willkie, Farr & Gallagher
One Chase Manhattan Plaza
New York, N.Y.
Att.: Miss Patricia Williams

Securities & Exchange Commission
500 N. Capitol St.
Washington, D.C. 20549
Att.: Thomas L. Taylor, III

~~attorney(s) for~~

Rogers & Wells
200 Park Ave.
New York, N.Y.
Att.: Mr. William F. Koegel

~~in this action, at~~

National Clearing Corp.
1735 K. St., N.W.
Washington, D.C. 20006
Att.: Mr. Robert Woldow

the address(es) designated by said attorney(s) for that purpose by depositing 1 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Robert Bailey
.....
ROBERT BAILEY

Sworn to before me, this
25 day of Sept. , 1975.

William Bailey
WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976